

Protection Order Deskbook

Prepared by the Protection Order Committee
of the Judicial Conference of Indiana

2004



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August 2004

PREPARED BY THE
PROTECTION ORDER COMMITTEE
OF THE
JUDICIAL CONFERENCE OF INDIANA

The text and forms contained in this Deskbook are available at the judicial branch website: <http://www.in.gov/judiciary/forms/po.html>

All updates and a revision table will be placed on this website only.



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FOREWORD

The Protection Order Committee of the Judicial Conference of Indiana is pleased to make available this Protection Order Deskbook as a general guide to understanding Orders for Protection currently available under Indiana statutes.

This information is being made available to Judges, Magistrates, Clerks, attorneys, victim advocates, and anyone accessing the Protection Order website. The website address is:

<http://www.IN.gov/judiciary/center/pubs.html>

All updates, as well as complete copies, are available for downloading from the website.

CAVEAT

The procedures and recommendations suggested in this Deskbook were compiled from the statutes and from the practices of Judges and judicial officials in Indiana.

This is not an official publication of the Indiana Supreme Court, nor should it be considered an authoritative statement of Indiana law. A majority of the forms in this manual have been officially adopted by the Division of State Court Administration. The other forms and procedures set forth in this Deskbook have not been approved or endorsed by the Indiana Supreme Court, but are offered as examples utilized by Judges throughout the state.

ACKNOWLEDGEMENTS

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Judge, Blackford Superior Court
Chair, Protective Order Committee
July, 2004

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PROTECTION ORDER FORMS

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CHAPTER 1

GETTING STARTED / JURISDICTION / SERVICE

I. Introduction and Definitions

A. What is the Indiana Civil Protection Order Act, and what is a Protection Order?

The Indiana Civil Protection Order Act, or ICPOA, is a set of laws passed by the Indiana General Assembly in 2002 that overhauled Indiana's response to domestic and family violence. The ICPOA is based largely on the Model Code on Domestic and Family Violence, which was developed by the National Council of Juvenile and Family Court Judges, on existing Indiana law, and on the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act. Under the ICPOA, Courts can issue Orders to protect people from domestic or family violence, stalking, or a sex offense. These Court Orders are called "Protection Orders" or "Orders for Protection" and the terms are used interchangeably. There are two (2) kinds of Protection Orders—an *Ex Parte* Protection Order, which is issued without a hearing, and a Protection Order Issued After a Hearing. Protection Orders normally last for two (2) years, unless the Judge decides on a different duration.

The person asking for the Order is called the "Petitioner." The Petitioner needs to file a Petition in a Court of record, against the other person, called the "Respondent." There are two (2) different kinds of Petitions a person can file: one kind allows a person to seek protection for himself or herself, and another kind allows a Petitioner to ask for protection on behalf of a child. **IMPORTANT NOTICE:** In order to file a case, a Petitioner *must* have the Respondent's:

- Correct name;
- Correct date of birth *or* Social Security number; and,
- Correct, current address.

B. Who can get a court order under this law?

The ICPOA was passed to promote the protection and safety of all victims of domestic or family violence, sexual assault, and stalking, and to prevent future violence against such victims. In order to apply for protection under this law, a **Petitioner** needs to have been a victim of:

- **Domestic or family violence;**
- **Stalking;** or,
- **A sex offense.**

"Domestic or family violence" means, except for an act of self-defense, the occurrence of at least one (1) of the following acts committed **by a family or household member**:

- (1) Attempting to cause, threatening to cause, or causing physical harm to another family or household member.
- (2) Placing a family or household member in fear of physical harm.
- (3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.

For purposes of [Ind. Code § 34-26-5](#), domestic and family violence also includes **stalking** (as defined in [Ind. Code § 35-45-10-1](#)) or a **sex offense** under [Ind. Code § 35-42-4](#), **whether or not the stalking or sex offense is committed by a family or household member**. [Ind. Code § 34-6-2-34.5](#) and [Parkhurst v. Van Winkle, 786 N.E.2d 1159](#) (Ind.Ct.App. 2003).

- C. The **Respondent** must be either a:
- **Family or household member** of the Petitioner; or,
 - Person who has committed stalking or a sex offense against the Petitioner.

"Family or household member" means:

- (1) a person who is a current or former spouse;
- (2) a person who is dating or has dated;
- (3) a person who is engaged or was engaged in a sexual relationship;
- (4) a person who is related by blood or adoption;
- (5) a person who is related or was related by marriage;
- (6) a person who has an established legal relationship or previously established a legal relationship:
 - (A) as a guardian;
 - (B) as a ward;
 - (C) as a custodian;
 - (D) as a foster parent; or
 - (E) in a capacity similar to those listed in clauses (A) through (D);
- (7) a person who has a child in common; and
- (8) a minor child of a person in a relationship described in subdivisions (1) through (7).

[Ind. Code § 34-6-2-44.8](#).

D. **"Stalking"** is defined by Indiana law ([Ind. Code § 35-45-10-1](#)) as: "A knowing or intentional **course of conduct** involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened." The term **"course of conduct"** means 2 or more incidents.

As used in the Stalking law, **"harassment"** means: "Conduct directed toward a victim that includes but is not limited to repeated or continuing **impermissible contact** that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include statutorily or constitutionally protected activity, such as lawful picketing pursuant to labor disputes or lawful employer-related activities pursuant to labor disputes."

As used in the Stalking law, **"impermissible contact"** includes (but is not limited to): "Knowingly or intentionally following or pursuing the victim."

- E. A **"sex offense"** means one of the following crimes under Indiana law ([Ind. Code § 35-42-4](#)):

- Rape;
- Criminal deviate conduct;
- Child molesting;
- Child exploitation;
- Vicarious sexual gratification;
- Child solicitation;
- Child seduction;
- Sexual battery; or,
- Sexual misconduct with a minor.

NOTE: In order for a person to ask for an Order for Protection because he or she was a victim of Stalking or a sex offense, it is not necessary for criminal charges to actually be filed. However, a victim of one of these kinds of crimes should always seek help from the police or sheriff and the prosecutor.

II. Jurisdiction and Venue

- A. Jurisdiction to Issue an Order—Any Court of record may issue an Order for Protection. See [Ind. Code § 34-26-5-4\(a\)](#).
- B. Venue—Proper venue is in the county where the Petitioner currently or temporarily resides, where the Respondent resides, or where the domestic or family violence occurred. See [Ind. Code § 34-26-5-4\(b\)](#).
- C. Residency Requirement—There is no minimum duration of residence required to establish residency or venue, unlike dissolution of marriage cases. See [Ind. Code § 34-26-5-4\(c\)](#).
- D. Service—Courts acquire jurisdiction over parties or persons in two general ways: either a person files the case, or a person is served. See Trial Rule 4(A).
 1. Service can be made in a number of ways.

BEST PRACTICE NOTE: For purposes of future enforcement, the Protection Order Committee recommends personal service on Respondents in accordance with Trial Rule 4.1(A)(2). See *Hill v. Ramey*, [744 N.E.2d 509](#) (Ind. Ct. App. 2001).

2. Service by registered or certified mail, as described in Trial Rule 4.1(A)(1), may be sufficient for future enforcement if a receipt is signed by the Respondent.
3. Service by “tack and mail”, as described in Trial Rule 4.1(A)(3), or by other means under Trial Rule 4 generally, may not be sufficient service by itself to show “beyond a reasonable doubt” that the Respondent knew of the existence of the Protection Order for subsequent criminal prosecution.

E. Special Circumstances

1. Juvenile Respondent - If a Petitioner seeks relief against an unemancipated minor, the case may originate in any Court of record and, if it is an emergency matter, be processed the same as an *ex parte* Petition. When a hearing is set, the matter may be transferred to a Court with juvenile jurisdiction. See [Ind. Code § 34-26-5-2\(d\)](#).

BEST PRACTICE NOTE: Although the language of the statute concerning juvenile Respondents is discretionary rather than mandatory, the Protection Order Committee recommends that a Judge in whose Court the Petition is filed *always* transfer the matter to a Court with juvenile jurisdiction. In most cases, the Juvenile Court is better equipped (in terms of staff and available resources) to handle allegations involving misconduct on the part of a juvenile.

2. Existence of other actions between Petitioner and Respondent.
 - a. An Order for Protection is in addition to, and not instead of, other court proceedings. See [Ind. Code § 34-26-5-6\(1\)](#).
 - b. A Petitioner is not barred from seeking an order because of another pending proceeding. See [Ind. Code § 34-26-5-6\(2\)](#).
 - c. A Court may not delay granting relief because of the existence of a pending action. See [Ind. Code § 34-26-5-6\(3\)](#).

If a person who petitions for an *ex parte* Order for Protection also has a pending case involving the Respondent or a child of the Petitioner and Respondent, the Court that has been petitioned for relief shall immediately consider the *ex parte* Petition and then transfer that matter to the Court in which the other case is pending. See [Ind. Code § 34-26-5-6\(4\)](#).

There is an inconsistency between this statute and other statutes that require a Protection Order proceeding to be filed in the Court that has jurisdiction of the pending dissolution, paternity, or legal separation. See [Ind. Code § 31-14-16-1](#) and [Ind. Code 31-15-5-1](#). The Juvenile Code sets forth that the Juvenile Court has exclusive jurisdiction in some matters. See [Ind. Code § 31-30-1-1](#).

[Ind. Code § 34-26-5-6](#) allows any Court to resolve an emergency on an *ex parte* basis, and then transfer the case to the Court with the pending matter. This avoids having to dismiss the Petition and re-file it in another Court.

State ex rel. Meade v. Marshall Superior Court II, [644 N.E.2d 87](#) (Ind. 1994), interpreted the Protection Order statute that was in effect before the ICPOA was enacted. In part, a unanimous Supreme Court stated, “Does a court which dissolved a marriage and determined child custody and visitation maintain

continuing jurisdiction which prevents another court from entertaining petitions for protective orders which effectively modify the divorce decree? We hold that such protective orders must be filed in the court which heard the divorce, absent emergency or other good cause for going to a second court.”

BEST PRACTICE NOTE: Considerations for placement of a case in the proper Court:

1. Dissolution/paternity action already filed and still active in another Court—TRANSFER without issuing Protection Order unless emergency.
2. Dissolution/paternity action concluded and no children—Consider Petition on its own merits and rule accordingly.
3. Dissolution/paternity action over and minor children—Issue Order if an emergency and transfer. If no emergency, transfer without issuing Order.
4. Dissolution/paternity action filed after Protection Order has been issued—Transfer.
5. Juvenile action already pending against child against whom Protection Order is sought—Issue *ex parte* Order if emergency and transfer. If no emergency, transfer.

If it is not clear from the Petition itself whether another action is pending or whether there is an emergency, conduct a hearing on the record to inquire into those matters before issuing an *ex parte* Order. If possible, contact the other Court to determine the status of the other “pending” matter. If no emergency is apparent, simply set the matter for a hearing.

CHAPTER 2 DUTIES OF CLERK

I. Initial Filing

- A. The Clerk's office should provide the appropriate instruction form to the Petitioner to be read and reviewed by the Petitioner prior to distribution of the Petition form itself.

1. Is the Petitioner seeking protection for him/herself?

USE FORM PO-0102

Instructions for Petition for Order of Protection – Filed by person seeking protection

2. Is the Petitioner seeking protection for a child?

USE FORM PO-0103

Instructions for Petition for Order of Protection – Filed on behalf of a child

- B. Some Clerks provide a one-page form that lists the definitions that apply in Protection Order cases. This form can then be handed to the Petitioner for his/her review. Let the Petitioner decide if he/she feels the situation falls into a proper category. It is not the Clerk's duty to decide if Stalking or a sex crime has taken place---this decision should be left to the Judge. It is not necessary for criminal charges to have been filed for Stalking or sex crimes in order for a person to apply for a Protection Order.

- C. Forms to be provided by Clerk and to be completed by Petitioner

1. Petition

USE FORM PO-0100

Petition for Order for Protection and Request for a Hearing – Filed by person seeking protection

-or-

USE FORM PO-0101

Petition for Order for Protection and Request for a Hearing – Filed on behalf of a child

2. Confidential Form

A Confidential Form needs to be completed by the protected party. Because of confidentiality issues, the Clerk's copy of the Confidential

Form(s) with attached Orders needs to be kept in a secure location, separate from the pending case file (which is an open record). Some counties may choose to put the Confidential Forms in a sealed envelope within the Court file. This would require close supervision by the Clerk's Office if the public wants to view any of the case files to ensure the envelope is not opened or taken. A copy of the Confidential Form with a copy of the Order (including the cover sheet as the first page of the Order) must be distributed to all applicable law enforcement agencies. ***The Respondent shall not receive a copy of the Confidential Form.***

USE FORM PO-0104 Confidential Form

D. Determine in which Court the Petition should be filed.

1. Local filing rules should be followed.
2. Determine if there are other cases involving the same parties or their children. The new Protection Order case should be filed where another open case is pending (unless local rules provide otherwise) in the following situations:
 - the parties are already involved in a current dissolution or legal separation ([Ind. Code §31-15-4-1](#) & -5-1);
 - the parties are already involved in a current paternity case ([Ind. Code §31-14-16](#));
 - there is an existing Protection Order case; or,
 - the case involves a juvenile Respondent ([Ind. Code §34-26-5-2](#)(d)).

The term “pending” is interpreted differently by different Judges, so this may affect where the case is filed.

BEST PRACTICE NOTE: Protection Order cases protect victims of domestic or family violence, sexual abuse, or stalking. There are different evidentiary and confidentiality issues associated with Protection Orders than in domestic relations or paternity cases. The Orders in a separate Protection Order case will follow a different path than those for the dissolution or paternity action. In addition, in order to get a true count of the volume of Protection Order cases in Indiana, a new case number should be obtained for a Protection Order case filed by either party in a dissolution or paternity action.

Clerk's offices and Courts should cross-reference the Protection Order case in the file or case management system that includes the dissolution or paternity action. The Committee understands this recommendation may cause concerns in Courts that routinely handle dissolution or paternity cases, but not Protection Order cases. However, the Committee understands the intent of the statute is to emphasize the

seriousness of Protection Orders by keeping them separate from all other actions.

Senate Bill 479, effective July 1, 2003, amends [Ind. Code § 31-14-16-1](#), [Ind. Code § 31-15-4-1](#), and [Ind. Code § 31-15-5-1](#) to require that Protection Order Petitions affecting parties to a paternity, dissolution of marriage, or legal separation proceeding be filed in the Court in which the case is pending. Many Courts will maintain a complete separation by keeping the Protection Order as a totally separate case with a “PO” case number, thereby facilitating enforcement and case administration. Some Judges try to handle the Protection Order within the existing case, even to the extent of merging the Protection Order into the provisional orders or final decree. The merger of Orders creates substantial problems with respect to enforcement through criminal prosecution for Invasion of Privacy. Combining Orders creates further problems for Clerks and Sheriff Departments, who must comply with statutory requirements concerning service, confidentiality of records, and entry of the Orders into the appropriate databases. Moreover, merged Orders often lack a cover sheet (or require two cover sheets for one Order); they can violate Trial Rule 65, which prohibits two “orders” in the same Order; and, they usually lack the required statutory warning language. The Committee strongly recommends that a new case number be generated when a Petition for a Protection Order is filed.

Enforcement problems may occur with a merged Protection Order and dissolution decree. In one prosecution for Invasion of Privacy for violation of the Protection Order portion of the decree, the defense attorney argued that since the Protection Orders were in the same Order, they were a mutual Order and therefore not permitted under Indiana law. Since a mutual Order was not permitted, it could not be violated. The Judge commented: “I’ll never do that again!” The Protection Order Committee recommends that Judges issue separate Orders for Protection issued in conjunction with orders from other pending cases involving the same parties.

E. Filing Fee

The Court, Clerk, and Sheriff must not charge the Petitioner a fee for filing a Protection Order case, service of process, witnesses, or subpoenas. The Court may collect costs from the Respondent. See [Ind. Code §34-26-5-16](#).

II. Case Processing

- A. Assign the case to the proper Court. File-mark the Petition and record the case number on all documents. The Clerk should place the Petition into a file folder, and then the Clerk’s deputy will deliver the file to the Court, OR the Petitioner may deliver the file to the Court for review. The Court will then determine

whether to grant the Petition on an *ex parte* basis and/or set a hearing on the Petition.

1. Court issues an *Ex Parte* Order and the law does not require that a hearing be set.

Once the case file is returned to Clerk, the Clerk should follow established procedures for processing the file, including file-stamping and making an RJO entry.

There are special requirements for the Court to provide a copy of the Order to the Sheriff. The Court must transmit, by the end of the same business day on which the Protection Order is issued, a copy of the Order for Protection to each local law enforcement agency designated by a Petitioner. See [Ind. Code § 34-26-5-9](#) (d).

The Court is also required to provide a copy of the Order for Protection to the Clerk. See [Ind. Code § 34-26-5-9](#) (d). The Clerk shall provide a copy of the Order for Protection to each party, and to the law enforcement agency of the municipality in which the protected person resides. If the protected party is not domiciled in a municipality, the Clerk shall provide a copy of the Order to the Sheriff of the county where the protected person resides. See [Ind. Code § 5-2-9-6](#).

The Clerk must also provide a copy of the Confidential Form to certain parties. See [Ind. Code § 5-2-9-6](#) (b).

2. The Court issues an *Ex Parte* Order and the law requires that a hearing be set.

In addition to the procedures discussed in 1. above, the Notice to Appear, **FORM PO-0106**, shall be served on the Respondent, along with a copy of the Petition.

3. The Court does not issue an *Ex Parte* Order, but does set the case for a hearing.

The Respondent shall be served with a copy of the Petition and a Notice to Appear, **FORM PO-0106**.

4. The Court does not issue an *Ex Parte* Order, and does not set the case for a hearing.

Do not serve the Respondent. Send a copy of the Order Denying Petition for Order for Protection, **FORM PO-0110**, to the Petitioner.

B. Summons

Some counties issue a summons with a copy of the Petition, the Order granting a Protection Order, and/or a Notice to Appear. A copy of such a summons is at the end of this section. Some counties do not issue a separate summons. These counties simply serve the Petition, Order, and/or Notice to Appear. In those cases, the return of service should be a separate form.

C. Return of Service: Instructions to Clerk

1. After receiving the return of service information for a Protection, No Contact, or Workplace Violence Restraining Order, the Clerk shall transmit all return of service information to each Sheriff and law enforcement agency required to get a copy of the Confidential form and order. See [Ind. Code § 5-2-9-6](#) (b)(3).

2. If a person and/or employer are both protected by a Protection, No Contact, or Workplace Violence Restraining Order, and are domiciled in different municipalities, the Clerk shall send a copy of the Order to both the law enforcement agency of the municipality in which the protected person resides, and to the law enforcement agency of the municipality where the employer is located.

SEE FORM PNW-0100 Instructions to Clerk

Return of Service Information for Protective Orders under [Ind. Code § 5-2-9-6](#) (b)(3).

USE FORM PNW-0101 Return of Service Information for Protection Orders, No Contact Orders, and Workplace Violence Restraining Orders

D. Modification and/or Termination

The Clerk shall provide the following forms to the protected person upon request:

FORM P0-0108 Petitioner's Verified Request for Dismissal

FORM PO-0111 Verified Motion to Reinstate Petition for an Order for Protection

FORM PO-0115 Petition to Modify an Order for Protection

FORM PO-0116 Verified Petition to Renew Order for Protection

E. Whenever a Protection Order is modified or terminated, the Clerk must transmit a copy of the Modification/Termination notice to all the law

enforcement agencies that received the original Confidential Form/Protection Order.

USE FORM PO-0117 Notice of Extension or Modification

USE FORM PO-0118 Notice of Termination

F. Foreign Orders

USE FORM PO-0119 Registration of Foreign Protection Order

USE FORM PO-0120 Confidential Data Entry Form for Foreign Protection Orders.

Sometimes a protected person from another jurisdiction will want to register his/her Order in the local county. Registration is a way for the protected person to ensure that the Order will be entered into both the IDACS database and the NCIC POF. In order to register a foreign Protection Order, the protected person will need to complete the forms mentioned above. **Form PO-0119** is a pleading that is public in nature, and it will go into the Court file. The protected person will also need one (1) copy of the Protection Order he/she wishes to register, which will also be a public record and filed in the Court file. The second form, **PO-0120**, is not public, and should only be used by Court staff, Clerk personnel, and law enforcement to enter the necessary information into IDACS and the NCIC POF. A foreign, registered Order for Protection should be assigned a “PO” case number, and it should be enforced as if it was “... an order originating in Indiana” under [Ind. Code 34-26-5-17\(f\)](#).

Registration of a foreign Protection Order requires no judicial action. The form for registration, **Form PO-0119**, can be completed by the Petitioner and filed with the Clerk. Once filed, the Clerk should treat it like any other Order of Protection issued by an Indiana Court.

The purpose of this procedure is to register a Protection Order from another state (or from an Indian tribal Court) in the state of Indiana. The registration procedure is not required in order for the Order to be enforceable in Indiana. The use of this process is discretionary with the Petitioner. The forms should never be distributed to the Respondent.

The Confidential Form for foreign Protection Orders (**Form PO-0120**), is different from the Confidential Form for “domestic” Orders, in recognition of the fact that not every state’s laws and procedures are identical to Indiana’s. The foreign Protection Order might be an *ex parte* Order, or one

issued after a hearing. It may have been recently modified by the other state's (or tribe's) Court, and the protected person might just now be registering it. The forms are different because the Orders themselves are different.

STATE OF INDIANA)
) ss:
)
)
)
COUNTY OF _____)

IN THE _____ COURT NO.
(Insert address and phone number)

CASE NUMBER:

Petitioner

-v-

Respondent

SUMMONS ---Protection Order

TO RESPONDENT: (Name)
(Address)

You are hereby notified that you have been sued by the person named as Petitioner and in the Court indicated above.

The nature of the suit against you is stated in the Petition which is attached to this Summons. It also states the relief sought or the demand made against you by the Petitioner.

An answer or other responsive pleading is not required. However, if a hearing has been set, you are required to appear to answer the Petition. If you fail to appear at the hearing in the Court indicated above, the matter may be heard and determined in your absence.

Dated

Clerk, _____ Court

Petitioner or Counsel

Address:

Telephone:

Attorney Number:

The following manner of service of Summons is hereby designed:

- ☐ Registered or Certified Mail
- ☐ Service on individual at above address: _____ County: _____
- ☐ Service on agent: (specify)
- ☐ Service by Publication

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the ___ day of _____, 200__, I mailed a copy of this Summons and a copy of the Petition to the Respondent _____ by _____ mail, requesting a return receipt, at the address furnished by the Petitioner.

Dated

Clerk, _____ County Courts

RETURN ON SERVICE OF SUMMONS BY MAIL

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the Petition mailed to the Respondent, was accepted on the ___ day of ___, 200__.

I hereby certify that the attached return receipt was received by me on the ___ day of ___, 200__, showing that the Summons and a copy of the Petition was returned not accepted.

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the Petition mailed to the Respondent, was accepted by (age)___ on behalf of said Respondent on the ___ day of _____ 200__.

Clerk, _____ County Courts

SERVICE ACKNOWLEDGED

A copy of the within Summons and a copy of the Petition attached thereto were received by me at _____.

Dated

Signature of Respondent

RETURN OF SERVICE OF SUMMONS

I hereby certify that I have served the within Summons:

- (1) By delivering a copy of the Summons and a copy of the Petition to the Respondent on the ___ day of _____, 200__.
- (2) By leaving a copy of the Summons and a copy of the Petition:
 - (a) at the dwelling place or usual place of abode of the Respondent
 - (b) with a person of suitable age and discretion residing therein, namely _____ and by mailing a copy of the Summons to the Respondent, by first-class mail, to the address listed on the Summons, the last known address of the Respondent.

Sheriff of _____ County, Indiana
By: _____

CHAPTER 3

EX PARTE PROCEEDINGS AND ORDERS

“Ex parte proceeding: A proceeding in which not all parties are present or given the opportunity to be heard.—Also termed *ex parte hearing*.

Ex parte order. An order made by the court upon the application of one party to an action without notice to the other.”

Black’s Law Dictionary, 7th Edition (1999)

I. Relief that may be granted *ex parte* and without ever holding a hearing unless the Respondent asks for one.

- A. Prohibit the Respondent from committing or threatening acts of domestic or family violence, stalking, or sex offenses against the Petitioner and/or family or household members.
- B. Prohibit the Respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with the Petitioner.
- C. Order the Respondent to stay away from the Petitioner’s residence, school, employment and/or other places. See [Ind. Code § 34-26-5-9](#)(b)(1), (2) & (4).

USE FORM PO-0105

Ex Parte Order for Protection

- D. If, after a Court has granted *ex parte* relief, the Respondent desires a hearing to contest the *ex parte* Order, he or she may request one. See [Ind. Code § 34-26-5-10](#) (a).

USE FORM PO-0107

Respondent’s Verified
Request for a Hearing

II. Relief that may be initially granted *ex parte*, but requires a hearing within 30 days.

- A. Evicting the Respondent from the Petitioner’s residence.
- B. Ordering the Respondent to give the Petitioner possession or use of:
 - 1. A home they both share
 - 2. A car or other motor vehicle
 - 3. Other necessary personal items
- C. Ordering other relief necessary to provide for the safety and welfare of a

Petitioner and each designated family or household member. See [Ind. Code § 34-26-5-9\(b\)\(3\),\(5\) & \(6\)](#) and [Ind. Code § 34-26-5-10\(b\)](#).

USE FORM PO-0105

Ex Parte Order for Protection

-and-

USE FORM PO-0106

Notice to Appear

III. Relief that may be ordered only after notice to Respondent and a hearing.

- A. Specifying visitation (parenting time) arrangements.
- B. Ordering the Respondent to pay money to the Petitioner, or on the behalf of the Petitioner, for:
 - 1. Attorney fees;
 - 2. Rent or mortgage payments;
 - 3. Child support, if a duty exists;
 - 4. Other expenses related to domestic or family violence;
 - 5. Costs and fees incurred in bringing the action.
- C. Prohibiting the Respondent from possessing firearms, ammunition, or deadly weapons and requiring the Respondent to surrender firearms, ammunition, or deadly weapons. See [Ind. Code § 34-26-5-9](#) (c) (2), (3) & (4).

USE FORM PO-0112

Order for Protection (Short form)

-or-

USE FORM PO-0113

Order for Protection (Long form)

-and-

If the Respondent is prohibited from the use or possession of firearms:

USE FORM PO-0114

Notice to Indiana State Police
Re: Firearms

IV. *Ex parte* remedies do not include custody determinations.

- A. According to *In re Kern*, [774 N.E.2d 878](#) (Ind. 2002) and *In Re Anonymous*, [729 N.E.2d 566](#) (Ind. 2000), Orders granting or modifying custody shall not be entertained on an *ex parte* basis.
- B. Custody is not included in the Indiana Civil Protection Order Act (hereinafter

“ICPOA”). A Court has no authority to make a custody determination as part of a Protection Order. Parties must pursue custody in a dissolution or paternity action. If one is not pending, it should be filed.

Note: Be aware of distinctions between an Order for Protection and restraining orders under Trial Rule 65 (E). The Court can grant *ex parte* Orders for Protection if the statutory requirements are met. See In Re Anonymous, [786 N.E.2d 1185, at 1190](#) (Ind. 2003).

THE INDIANA CIVIL PROTECTION ORDER ACT AND HEARINGS

Things that don't require a hearing unless the Respondent asks for one:

- Prohibiting the Respondent from committing, or threatening to commit, acts of domestic or family violence, stalking, or sex offenses against the Petitioner or the Petitioner's family or household members;
- Prohibiting the Respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with the Petitioner;
- Ordering the Respondent to stay away from the Petitioner's residence, school, place of employment, or other places; and,
- Ordering the Respondent to stay away from places where the Petitioner's family or household members regularly go.

Things that can be ordered by the Judge right away, but that require a hearing to be held within 30 days:

- Evicting the Respondent from the Petitioner's home;
- Ordering the Respondent to give the Petitioner the possession and use of:
 - A home they both share;
 - A car or other motor vehicle;
 - Other necessary personal items;
- Ordering other additional relief.

Things that can only be ordered by the Judge once a hearing has been held:

- Visitation—establish rules for visitation, require that it be supervised by a third party, or deny visitation altogether;
- Ordering the Respondent to pay money to the Petitioner for various things, such as:
 - Attorney fees;
 - Rent/mortgage payments;
 - Child support/maintenance;
 - Medical expenses, counseling, shelter, repair or replacement of damaged property;
- Prohibiting the Respondent from possessing firearms, ammunition, or deadly weapons; and,
- If the Respondent owns a firearm, ammunition, or a deadly weapon, ordering the Respondent to surrender those items to a local law enforcement agency for the duration of the Order for Protection.

CHAPTER 4

HEARINGS FOR PROTECTION ORDERS

The Court must determine whether it has jurisdiction and has proper venue to hear the Petition. If the Petition does not concern an act of domestic violence, sexual abuse, or stalking, dismiss the Petition.

USE FORM PO-0109 Order Dismissing Petition for Order of Protection

USE FORM PO-0118 Notice of Termination

If another Court has jurisdiction of the parties because of a pending dissolution, paternity, CHINS, or delinquency proceeding and no emergency exists, transfer the Petition to that Court. If appropriate, extend or modify the Protection Order.

USE FORM PO-0117 Notice of Extension or Modification

I. Parties

A. Petitioner

1. Adult Victims of Domestic or Family Violence. A victim of domestic or family violence may file a Petition. See [Ind. Code § 34-26-5-2\(a\)](#). “Domestic or family violence” is defined in [Ind. Code § 34-6-2-34.5](#). “Family or household member” is defined in [Ind. Code § 34-6-2-44.8](#).

USE FORM PO-0102 Instructions for Petition For Order of Protection – Filed By Person Seeking Protection

2. Child Victims of Domestic or Family Violence. The parent, guardian, or other representative of a child who has been a victim of domestic or family violence, stalking, or a sex offense may file a Petition on behalf of the child. See [Ind. Code § 34-26-5-2](#). “Domestic or family violence” is defined in [Ind. Code § 34-6-2-34.5](#). “Family or household member” is defined in [Ind. Code § 34-6-2-44.8](#).

USE FORM PO-0103 Instructions for Petition for Order of Protection – Filed on Behalf of a Child

3. Adult and Child Victims of Stalking. Stalking is included in the definition of domestic or family violence. See [Ind. Code § 34-6-2-34.5](#); [Ind. Code §](#)

[34-26-5-2\(a\)\(2\)](#). A criminal charge or conviction is not required. Stalking is defined in [Ind. Code § 35-45-10-5](#).

USE FORM PO-0102

Instructions for Petition for an Order for Protection – Filed by Person Seeking Protection

-or-

USE FORM PO-0103

Instructions for Petition for an Order for Protection – Filed on Behalf of a Child

4. Adult and Child Victims of Sex Offenses. Sex offenses are included in the definition of domestic or family violence. See [Ind. Code § 34-6-2-34.5](#); [Ind. Code § 34-26-5-2\(a\)\(2\)](#). Sex offenses are enumerated in [Ind. Code § 35-42-4](#). A criminal charge or conviction is not required.

USE FORM PO-0102

Instructions for Petition for an Order for Protection – Filed by Person Seeking Protection

-or-

USE FORM PO-0103

Instructions for Petition for an Order for Protection – Filed on Behalf of a Child

B. Respondent

1. The Petition may be brought against a family or household member who commits an act of domestic or family violence, or against any person who commits stalking or a sex offense against the victim. See [Ind. Code § 34-26-5-2](#); [Essany v. Bower](#), [790 N.E.2d 148](#) (Ind. Ct. App. 2003); [Parkhurst v. Van Winkle](#), [786 N.E.2d 1159](#) (Ind. Ct. App. 2003).
2. Only one Respondent per Order. A Petition may name more than one Respondent, but each Respondent requires a separate case number and a separate Court file. See [Ind. Code § 34-26-5-2\(c\)](#).
3. Minor Respondents. A Petition may name an unemancipated minor as a Respondent. Any Court of record may issue an *ex parte* Order as to an unemancipated minor, but the hearing may be held in a Court having juvenile jurisdiction. See [Ind. Code § 34-26-5-2\(d\)](#).
4. Guardians *ad Litem*. The Court may appoint a guardian *ad litem* to represent the interests of a child of one or both parents. See [Ind. Code § 34-26-5-19](#).

II. Jurisdiction and Venue

A. Subject Matter Jurisdiction.

1. The Court's jurisdiction is limited to occurrences of domestic or family violence, stalking, and sex offenses. See [Ind. Code § 34-26-5-2](#).
2. Only a Court of record may issue an Order for Protection. See [Ind. Code § 34-26-5-4](#).

B. Venue

1. Effect of Pending Proceedings.
 - a. Another pending proceeding between the parties does not preclude the entry of an Order for Protection. An Order for Protection is in addition to, and not instead of, another available civil or criminal proceeding. See [Ind. Code § 34-26-5-6\(1\)](#).
 - b. A Petitioner is not barred from seeking an Order because of another pending proceeding. See [Ind. Code § 34-26-5-6\(2\)](#).
 - c. A Court may not delay granting relief because of the existence of a pending action between the Petitioner and the Respondent. See [Ind. Code § 34-26-5-6\(3\)](#).
 - d. After the Court rules on the Petition *ex parte*, the case must be transferred for hearing to the Court having jurisdiction of another pending case between the parties or involving their child. See [Ind. Code § 34-26-5-6\(4\)](#).
2. Venue is proper only in the county where the Petitioner currently or temporarily resides, the Respondent resides, or where the domestic or family violence occurred. See [Ind. Code § 34-26-5-4\(b\)](#).
3. There is no minimum residency requirement for the Petition. See [Ind. Code § 34-26-5-4\(c\)](#). For example, if a Petitioner is temporarily residing at a relative's house or at a shelter in a county, then for the purposes of the ICPOA, the Petitioner has sufficient residence in that county to file a Petition for a Protection Order.

III. Procedural matters

A. Confidentiality of the Petitioner's address

1. The Petitioner's address may be omitted from all non-confidential documents filed with the Court. See [Ind. Code § 34-26-5-7](#).
2. If disclosure of the address is needed to determine jurisdiction or venue, the Court may order disclosure: (a) with the Petitioner's consent; (b) orally in the Judge's chambers and out of the presence of a Respondent with a sealed record made; or, (c) after a hearing in which the Petitioner's safety is considered. See [Ind. Code § 34-26-5-7](#).
3. In any event, the Petitioner must provide the Court with a "public mailing address" for use by the Court, the Clerk, and opposing counsel.

B. Form of Petition; Notice; Time of Hearing; Authority

1. The Petition must contain a request for relief. See [Ind. Code § 34-26-5-8](#). The Petitioner is responsible for completing the prescribed forms.
2. Notice of the hearing. The Court must give notice of the hearing by ordinary mail. See [Ind. Code § 34-26-5-10](#)(a). The Order for Protection, however, must be delivered to the Sheriff for service. See [Ind. Code § 34-26-5-9](#)(d).
3. Time of hearing. If a hearing is required, it must be held within 30 days of the filing of the Petition. See [Ind. Code § 34-26-10](#)(b).
4. Priority of the hearing. The hearing must be given precedence over all other matters except older matters of the same character. See [Ind. Code § 34-26-10](#)(b).

C. Dismissal and Default

1. Dismissal. If the Petitioner moves in writing or orally on the record for dismissal, the Court shall dismiss the case without prejudice and without delay or condition. See [Ind. Code § 34-26-5-12](#). This law serves to enhance the safety and autonomy of a Petitioner who has been a victim of domestic or family violence. Even though a Judge may not believe that dismissal of the Order for Protection is the best way to ensure a victim's safety, the fact is that the victim alone is, ultimately, the best judge of his or her own safety. Weisz, A.N., Tolman, R.M., and Saunders, D.G. (January, 2000) "Assessing the Risk of Severe Domestic Violence: The Importance of Survivors' Predictions." 15 *Journal of Interpersonal Violence* (1), pages 75-90. Sage Publications, Inc.

USE FORM PO-0109

Order Dismissing Petition for Order of Protection

USE FORM PO-0118

Notice of Termination

2. Default. If the Respondent fails to appear after having been served, the Court should hold an evidentiary hearing and grant such relief as the Petitioner requests and the evidence supports. If the Court extends or modifies an *ex parte* Order, then the Petitioner and the Court must complete their respective parts of **Form PO-117**, Notice of Extension or Modification.
3. Failure of the Petitioner to appear. If the Petitioner fails to appear, and the Respondent does appear, the Court may dismiss the Petition without prejudice, or the Court may reset the hearing for a later date.

USE FORM PO-0109

Order Dismissing Petition for Order of Protection

USE FORM PO-0118

Notice of Termination

4. Failure of both parties to appear. If both parties fail to appear, the Court may dismiss the Petition and terminate the *ex parte* Order, or may leave the *ex parte* Order in place but grant no additional relief.

USE FORM PO-0109

Order Dismissing Petition for Order of Protection

USE FORM PO-0118

Notice of Termination

D. Evidentiary Matters

1. Subject Matter. The only proper subjects of a Protection Order hearing are domestic or family violence, stalking, and sex offenses. See [Ind. Code § 34-26-5-2](#); [Ind. Code § 34-26-5-9](#).
2. Issues. According to the ICPOA, the Court must decide the following issues at a Protection Order hearing:
 - whether domestic or family violence, stalking, or a sex offense has occurred, [Ind. Code § 34-26-5-9](#)(a) and (f);
 - whether a Respondent represents a credible threat to the safety of a Petitioner or a member of the Petitioner's household, [Ind. Code § 34-26-5-9](#)(f); and,
 - what relief is necessary to bring about a cessation of the violence or the threat of violence. See [Ind. Code § 34-26-5-9](#)(f).
3. Petitioner can't waive protection. An invitation from the Petitioner does not waive or nullify an Order for Protection. See [Ind. Code § 34-26-5-11](#). This section of the ICPOA firmly underscores the principle that court orders may be modified only by Judges and rejects the notion that any party, by his or her conduct, can set aside or modify the terms and conditions of any Order for Protection, even by agreement of the parties. The remedy for the victim or perpetrator seeking to be excused from any provision of an Order for Protection is to petition for modification pursuant to [Ind. Code §§34-26-5-8](#) and -9. Likewise, this section gives unequivocal direction to law enforcement officers that Orders for Protection are to be enforced as written and that no action by a party relieves the duty to enforce the Order. Model Code on Domestic and Family Violence, NCJFCJ (1994).
4. Lapse of time no bar. A Court cannot deny relief solely because of lapse of time between the act of violence and the filing of the Petition. See [Ind. Code § 34-26-5-13](#). This section of the ICPOA recognizes that a perpetrator of domestic or family violence may pose a risk of violence

long after the last act or episode of violence, and an Order may be necessary to protect a victim from that continuing or recurrent risk. Model Code on Domestic and Family Violence, NCJFCJ (1994). As an example, the intimate partner was incarcerated for a period of years for setting the Petitioner's home on fire, and the Petitioner is requesting protection.

5. Rules of Evidence Apply. The statute makes no provision for relaxed rules of evidence.
6. Child Hearsay. One frequent evidentiary challenge is child hearsay. Exceptions such as excited utterance may apply. Be aware of the potential impact of the United States Supreme Court's ruling in Crawford v. Washington, [124 S.Ct. 1354](#) (2004) regarding the admissibility of child hearsay.

BEST PRACTICE NOTE: Judges should consider the appointment of a guardian *ad litem* in situations where they are suspicious of child abuse or neglect, but the evidence of child abuse or neglect is inadmissible.

7. Right to present evidence. The parties to a Protection Order proceeding have the right to present evidence and cross-examine the witnesses. Essany v. Bower, [790 N.E.2d 148](#) (Ind. Ct. App. 2003)
8. Burden of proof. The Petitioner has the burden of proving domestic or family violence, stalking, or a sex offense by a preponderance of the evidence. Essany v. Bower, [790 N.E.2d 148](#) (Ind. Ct. App. 2003); [Ind. Code § 34-26-5-9](#) (f).

BEST PRACTICE NOTE: Even if a Respondent appears at an evidentiary hearing and agrees to the issuance of an Order for Protection incorporating all of the relief the Petitioner requested, a Judge should still swear in the parties and, at the very least, obtain a factual basis for the issuance of the Order. A Protection Order places limitations on a Respondent's constitutional rights and subjects a Respondent to criminal prosecution upon a violation. Therefore, the Judge needs to make an adequate record in case the need to enforce the Order should ever arise.

9. Mutual Orders. As discussed elsewhere in this Deskbook, mutual Orders for Protection are not entitled to full faith and credit. Trial Courts have a duty to hold evidentiary hearings in Protection Order cases, and cannot issue mutual Orders unless separate Petitions were filed. Maurer v. Maurer, [712 N.E.2d 990](#) (Ind. Ct. App. 1999).
10. Evidence presented at hearing differs from allegations in Petition. The case of Garmene v. LeMasters, [743 N.E.2d 782](#) (Ind. Ct. App. 2001) discussed the use of form Petitions and what should happen when the

evidence presented at the hearing differs from the allegations in the Petition. The Court of Appeals also considered the trial court's authority to prohibit the possession of a firearm under [Ind. Code §34-26-2-12](#) (the precursor to [Ind. Code §34-26-5-9](#)) and the VAWA, as well as the sufficiency of the evidence. Everything the magistrate did was upheld.

IV. **Effect of Order After Hearing**

- A. Duration. An Order for Protection remains in effect for two years after the date of issuance, unless another date is ordered by the Court. See [Ind. Code § 34-26-5-9](#) (e).
- B. Effect on other cases.
 - 1. Order in other case. An Order for ...visitation ...or possession or control of property is superseded by an Order issued from a Court exercising dissolution, legal separation, paternity, or guardianship jurisdiction over the parties. See [Ind. Code § 34-26-5-9\(g\)](#). Even though the language of IC 34-26-5-9(g) contains the word "custody," the ICPOA does not empower Judges to make custody decisions as a part of a Protection Order case.
 - 2. No inference or presumption. An Order for Protection raises no inference or presumption in a subsequent case or hearing between the parties. See [Ind. Code § 34-36-5-9\(b\)](#).

V. **Relief**

- A. Relief that may be granted *ex parte* and without ever holding a hearing unless the Respondent asks for one.
 - 1. Prohibiting the Respondent from committing or threatening acts of domestic or family violence, stalking, or sex offenses against the Petitioner and/or family or household members.
 - 2. Prohibiting the Respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with the Petitioner.
 - 3. Ordering the Respondent to stay away from the Petitioner's residence, school, employment, or other places.
See [Ind. Code § 34-26-5-9\(b\)\(1\), \(2\) & \(4\)](#).

USE FORM PO-0105

Ex Parte Order for Protection

USE FORM PO-0107

Respondent's Verified Request for a Hearing

- B. Relief that may be initially granted *ex parte*, but requires a hearing within 30 days.
 - 1. Evicting the Respondent from the Petitioner's residence;
 - 2. Ordering the Respondent to give the Petitioner possession or use of:

- a. A home they both share
- b. A car or other motor vehicle
- c. Other necessary personal items
- 3. Ordering other relief necessary to provide for the safety and welfare of a Petitioner and each designated family or household member.
See [Ind. Code § 34-26-5-9](#)(b)(3), (5) & (6) and [Ind. Code § 34-26-5-10](#)(b).

USE FORM PO-0105

Ex Parte Order for Protection and

USE FORM PO-0106

Notice to Appear

C. Relief that may be ordered only after notice and hearing.

- 1. Specifying visitation (parenting time) arrangements for the Respondent and a minor child, and/or requiring supervision by a third party, or denying visitation altogether.
- 2. Ordering the Respondent to pay money to the Petitioner, or on the behalf of the Petitioner, for:
 - a. Attorney fees;
 - b. Rent or mortgage payments;
 - c. Child support, if a duty exists;
 - d. Other expenses related to domestic or family violence;
 - e. Costs and fees incurred in bringing the action.
- 3. Prohibiting the Respondent from possessing firearms, ammunition, or deadly weapons, and requiring the Respondent to surrender firearms, ammunition, or deadly weapons.
See [Ind. Code § 34-26-5-9](#) (c) (2), (3) & (4).

USE FORM PO-0112

Order for Protection (Short form if visitation arrangements are simple or not needed)

-or-

USE FORM PO-0113

Order for Protection (Long form for more complex relief)

-and-

If Respondent is prohibited from the use or possession of firearms:

USE FORM PO-0114

Notice to Indiana State Police Re: Firearms

D. Weapons and Brady Law issues

See Section 10 of this Deskbook on Weapons and the Brady Act

- E. No mutual Order for Protection. The Court may not grant a mutual Order for Protection to opposing parties. See [Ind. Code § 34-26-5-14\(a\)](#). However, the parties may file separate Petitions and the Court may grant both by separate Orders. [Id.](#) See Chapter 11, Full Faith & Credit.
- F. No mediation. The Court may not order the parties to a Protection Order proceeding to mediation. This does not preclude an Order for mediation in another case between the same parties. See [Ind. Code § 34-26-5-15](#).
- G. Fees and costs. The Court may not order the Petitioner to pay a fee for filing, service of process, witnesses, or subpoenas. The Court may collect costs from the Respondent. See [Ind. Code § 34-26-5-16](#).

VI. Procedures after Hearing

- A. Court's duties after hearing. The Court shall:
 - (1) cause the Order for Protection to be delivered to the county Sheriff for service;
 - (2) make reasonable efforts to ensure that the Order for Protection is understood by the Petitioner and the Respondent (if present);
 - (3) transmit, by the end of the same business day on which the Order for Protection is issued, a copy of the Order for Protection to each local law enforcement agency designated by a Petitioner;
 - (4) transmit a copy of the Order to the Clerk for processing under [Ind. Code § 5-2-9](#); and,
 - (5) notify the state police department of the Order if the Order and the parties meet the criteria under [18 U.S.C. 922\(g\)\(8\)](#) (the Brady Act). This notification is accomplished by completing Sections I and II (pages 2 and 3) of the Confidential Form, **Form PO-104**. Only the judicial officer who issued the Protection Order should complete these sections. Note that the judicial officer must sign the last page of the Confidential Form.
- B. When granting a Petition after a hearing, where an *ex parte* Order has been in place, the Court should send both the new Order and a Notice of Extension or Modification to the Sheriff and Clerk for processing. The party who obtained the Protection Order should complete the Notice of Extension or Modification. Note that the judicial officer who issued the new Order must complete and sign page 4 of the Notice of Extension or Modification.

USE FORM PO-0117

Notice of Extension or Modification

- C. When denying a Petition after a hearing when an *ex parte* Order has been in place, the Court should send a Notice of Termination to the Sheriff and Clerk for processing. The party that obtained the Protection Order should complete the Notice of Termination.

- D. Processing of order by Clerk after hearing. [Ind. Code § 5-2-9-6](#) sets forth procedures for the Clerk to provide copies of the Protection Order to the parties, to provide the Protection Order and the Confidential Form to law enforcement agencies, and to maintain a confidential file.

CHAPTER 5

IMPACT ON DISSOLUTION AND PATERNITY CASES

I. Domestic Relations: Restraining or Protection Order?

When seeking to prohibit family or domestic violence, the parties and the Court should proceed under [Indiana Code § 34-26-5](#) for entry of an Order for Protection as a separate case. See Indiana Trial Rule 65(E).

- A. Orders for Protection address violence. An Order for Protection under [Ind. Code § 34-26-5](#) is the preferred remedy when seeking to prohibit family or domestic violence. The Order for Protection is entered into the state computer system referred to as IDACS and the federal database, the NCIC POF. Conversely, a temporary restraining order may not be entered into the same databases, IDACS/NCIC POF. Furthermore, the restraining order entered as part of a dissolution action or paternity action may not afford the same level of confidentiality to the victim. Finally, it is not a crime to violate a restraining order. See [Ind. Code §§ 35-46-1-15.1-20](#), the Invasion of Privacy statutes.
- B. Temporary restraining orders. A temporary restraining order may be issued if the parties are simply seeking to prohibit the dissipation of assets or seeking the possession of property. See [Ind. Code § 31-15-4-3](#). A temporary restraining order may also be issued to enjoin a parent from removing a child of the parties from the state of Indiana with the intent of depriving the Court of jurisdiction over such child. Indiana Trial Rule 65(E)(1)(b). A temporary restraining order should be used for minor acts of harassment or incivility. When domestic violence (or a threat of domestic violence) is not involved, a temporary restraining order should be used.

II. Where Should the Protection Order Petition be Filed?

The Petition for a Protection Order should be filed in the Court exercising jurisdiction over the parties' dissolution, paternity, legal separation, or guardianship case.

- A. A Court cannot delay granting *ex parte* relief because of the existence of a pending action between the Petitioner and the Respondent. The Court should consider the Petition for relief immediately and then transfer that matter to the Court in which the other case is pending. See [Ind. Code § 34-26-6\(3\) & \(4\)](#).

- B. The Committee recommends that the Clerk and the Court specifically ask the parties if there is other litigation pending. Each party has a continuing duty to inform the Court of: separate proceedings for Protection Orders; any civil litigation between the parties and any paternity, juvenile, family or domestic relations cases; and, any criminal case involving the parties or a child of a party. See [Ind. Code § 34-26-5-5](#).
- C. An Order for visitation or possession of property issued under [Ind. Code § 34-26-5](#) is superseded by an Order issued from a Court exercising dissolution, legal separation, paternity, or guardianship jurisdiction over the parties. See [Ind. Code § 34-26-5-9\(g\)](#).
- D. A parent in a paternity action may request a Protection Order against the other parent to prevent family or domestic violence any time before or after the decree of paternity is entered, but must file under [Ind. Code § 34-26-5](#) in the Court in which the paternity case is pending, if the parties have an unemancipated child. See [Ind. Code § 34-14-16-1](#). This does not prohibit hearing an *ex parte* matter and transferring the case in accordance with paragraph A. above.
- E. Likewise, either party to a dissolution may request a Protection Order against the other to prevent family or domestic violence any time during the dissolution, by filing under [Ind. Code § 34-26-5](#) in the Court in which the dissolution case is pending. See [Ind. Code § 31-15-5-1](#).
- F. An Order for Protection is in addition to, and not instead of, another available civil or criminal proceeding. A Petitioner is not barred from seeking an Order for Protection because of another pending proceeding. See [Ind. Code § 34-26-5-6\(1\)](#).

III. Should the Protection Order Case be Filed as a Separate Case From the Parties' Dissolution or Paternity Case?

Yes. This practice facilitates data entry into IDACS/NCIC and other enforcement issues if the Protection Order case has a separate case number. Moreover, it is helpful to monitor the total number of Protection Order cases filed statewide.

IV. Other Important Considerations

- A. **Waiver or Nullification of Order.** If the Respondent is excluded from the residence of the Petitioner, or is ordered to stay away from the Petitioner, an invitation by the Petitioner does not waive or nullify an Order for Protection. See [Ind. Code § 34-26-5-11](#).
- B. **A Court may not grant a mutual Order for Protection to opposing parties.**

A Court may not grant a mutual Order for Protection to opposing parties. If both parties allege injury, they shall file separate Petitions under separate cases. The Court shall review each Petition separately in an individual or a consolidated hearing and grant or deny each Petition on the Petition's individual merits. If the trial Court finds cause to grant both Petitions, the Court must do so by separate Orders with specific findings. See [Ind. Code § 34-26-5-14](#) and Trial Rule 65(E).

C. Custody is not a remedy under the Indiana Civil Protection Order Act.

The Court is not vested with subject matter jurisdiction to award custody as a part of a Protection Order. See [Ind. Code § 34-26-5](#) *et seq.*

D. An Order for Protection is effective for two (2) years unless the Court orders another expiration date. See [Ind. Code § 34-26-5-9](#)(e).

E. An Order for Protection does not raise an inference or presumption in a subsequent case or hearing. See [Ind. Code § 34-26-5-9](#)(h).

F. A Court may not order mediation for resolution of the issues in a Protection Order case involving family or domestic violence.

The Court may order the parties into mediation in matters unrelated to domestic violence. See [Ind. Code § 34-26-5-15](#).

G. A Court may appoint a Guardian *ad litem* to represent a child of one of the parties to a Protection Order case. See [Ind. Code § 34-26-5-19](#).

H. Forms. The forms contained at <http://www.in.gov/judiciary/forms/po.html> and created under [Ind. Code § 34-26-5-3](#) are mandatory.

CHAPTER 6 NO CONTACT ORDERS

I. Background

It has been said that there are two kinds of people in the world. There are those who believe that everything in the world can be divided into two categories and those who do not. Protection Orders can indeed be divided into two groups, Protection Orders and No Contact Orders. No Contact Orders may only be issued in criminal and juvenile proceedings.

No Contact Orders issued may only be issued under the authority of the following statutes:

- | | | |
|----|--|--|
| 1. | <u>Ind. Code § 31-32-13</u> | “Generic” Juvenile Court Order |
| 2. | <u>Ind. Code § 31-34-20</u> | CHINS |
| 3. | <u>Ind. Code § 31-34-25</u> | CHINS |
| 4. | <u>Ind. Code § 31-37-19</u> | Delinquency |
| 5. | <u>Ind. Code § 31-37-25</u> | Delinquency |
| 6. | <u>Ind. Code § 33-14-1-7</u> | Pretrial Diversion |
| 7. | <u>Ind. Code § 35-33-8-3.2</u> | Pretrial Release/Bail and Recognizance |
| 8. | <u>Ind. Code § 35-38-2-2.3</u> | Probation |

II. No Contact Orders in Criminal Proceedings

- A. Standard of proof necessary for a No Contact Order as condition of pretrial release:

The bail statute, [Ind. Code § 35-33-8-3.2](#), provides in relevant part that:

“(a) A court may admit a defendant to bail and impose any of the following conditions to assure the defendant’s appearance at any stage of the legal proceedings, or upon clear and convincing evidence that the defendant poses a risk of physical danger to another person... to assure the public’s physical safety...(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release. (4) Require the defendant to refrain from any direct or indirect contact with an individual...

(7) Release the defendant on personal recognizance unless: (A) the state presents evidence relevant to a risk by the defendant: (i) of nonappearance; or (ii) to the physical safety of the public; and (B) the court finds by a preponderance of the evidence that the risk exists.

(8) Impose any other reasonable restrictions designed to assure the defendant’s presence in court or the physical safety of another person or the community.”

Some argue that section (a) of this statute creates two categories which may serve as the basis for conditions of bail: (a) those which help to assure the Defendant’s

appearance at any stage of the legal proceedings; and, (b) those which help to assure public or individual safety. The argument continues: No Contact Orders which are issued as a condition of bail must be supported by clear and convincing evidence that the Defendant “poses a risk of physical danger to another person.” One response to this argument is that the probable cause affidavit itself may contain sufficient clear and convincing evidence upon which to issue the No Contact Order.

No Contact Orders are requested by the State of Indiana. There is no requirement that an individual witness or victim request a No Contact Order, or endorse a request for a No Contact Order. However, Indiana’s victim rights laws, which are codified in [Ind. Code § 35-40](#) *et seq.*, do confer rights upon crime victims with respect to issues of pretrial release and revocation of bail.

BEST PRACTICE NOTE: The Committee recommends that, at the outset of each bond hearing on a case with a victim, Judges routinely ask the prosecutor to make a record regarding whether the State has complied with the victim rights laws.

If a Defendant does not post bond and remains in jail, but violates a No Contact Order, the prosecutor may determine that there is not probable cause for a criminal charge of Invasion of Privacy. If that jail inmate writes letters or phones the victim, other remedies may be available, including a Protection Order. When the charged crime is not family or domestic violence, stalking, or a sex offense, a Protection Order may still be available if the contacts from the jail constitute stalking. See [Smith v. State](#), [802 N.E.2d 948](#) (Ind. Ct. App. 2004). Otherwise, administrative restrictions on jail communications may be enforced. Prosecutors may examine whether the inmate is committing new crimes with respect to intimidating witnesses.

The Court, after reviewing the State’s motion and the probable cause affidavit, should decide whether to issue the No Contact Order. If the Court decides a No Contact Order is not warranted by the facts, the Court may issue an Order Denying the No Contact Order. See **FORM PO-0110** (Order Denying An Order for Protection) for a model, or set the motion for a hearing.

If the Court grants the motion, the Court should issue a “No Contact Order Upon Release From Custody on Bail or Personal Recognizance.” **USE FORM NC-0100**. The cover sheet is required as page one (1) of the Order. **Form PO-0104**, the Confidential Form, must accompany the Order so that the data will be entered into IDACS and NCIC, and must be completed with all No Contact Orders. It is the responsibility of the judicial officer issuing the No Contact Order to complete Sections I and II (pages 2 and 3) of the Confidential Form.

USE FORM NC-0100

No Contact Order Upon Release From
Custody on Bail or Personal Recognizance

USE COVER SHEET

USE FORM PO-0104

Confidential Form

B. The Initial Hearing

No Contact Orders should be served by a judicial officer and reviewed with the Defendant. This should be done on the record, and is usually done at the initial hearing. The Defendant should be required to indicate his/her understanding of the elements of the Order on the record. Page 2 of the Order indicates the possible penalties for a violation of the Order. The Defendant should be required to sign and date the Order after the Order has been served and explained. Delegating the task of reviewing a No Contact Order to Court personnel or to a law enforcement officer is discouraged. If the Defendant refuses to sign the Order, the Court may decide not to release the Defendant.

C. Weapons

While reviewing the No Contact Order with the Defendant, the Court should ask whether the Defendant possesses a weapon. The judicial officer should make this inquiry while reviewing the portion of the No Contact Order that prohibits the Defendant from possessing firearms, deadly weapons, or ammunition (Paragraph 2). If the Defendant owns/possesses a weapon(s), he/she should be ordered to surrender the weapon(s) to the Sheriff or other law enforcement agency.

BEST PRACTICE NOTE: Courts should develop written protocols with local law enforcement agencies regarding court Orders to confiscate firearms, ammunition, and deadly weapons for safekeeping while Protection Orders or No Contact Orders are in effect. The protocols should include sections on storage of the items as well as procedures for returning the items.

D. Entry of No Contact Order in IDACS/NCIC

The No Contact Order must be distributed to the Sheriff before the close of business on the day the Order is issued. The Sheriff's office, upon receipt of a copy of the No Contact Order and the Confidential Form, shall enter the information into IDACS/NCIC.

E. Violations of the No Contact Order

Actions for violations of No Contact Orders are brought by the prosecuting attorney and include: (1) filing a petition for revocation/modification of bail (the Court must hold an evidentiary hearing on a petition of this nature); (2) filing a criminal charge of Invasion of Privacy; (3) filing other criminal charges, including Stalking, Intimidation, Battery, *etc.*; or, (4) filing a separate case for indirect

criminal contempt. The choice of remedy is at the discretion of the prosecuting attorney.

F. Termination of the No Contact Order

Since it is a part of the bail statute, a No Contact Order of this nature terminates when the Court releases the bond. A Court that desires to extend the provisions of a No Contact Order may do so by making “no contact” a provision of an Order of probation. **FORM PO-0118**, the Notice of Termination, should be completed and filed by the prosecutor’s office when the case is concluded

III. **A No Contact Order as a Condition of Probation**

[Ind. Code § 35-38-2-2.3](#) gives the Court the authority to enter a No Contact Order as a condition of probation. If the Court issues a No Contact Order, then the Court shall distribute the Order to the Clerk of the Court to comply with [Ind. Code § 5-2-9](#), and the prosecutor shall file a Confidential Form. It is the responsibility of the judicial officer issuing the No Contact Order to complete Sections I and II (pages 2 and 3) of the Confidential Form. A violation of this Order constitutes a basis for both a revocation of probation and for the filing of a separate criminal case, including Invasion of Privacy.

USE FORM NC-0102

No Contact Order While on Probation

USE COVER SHEET

USE FORM PO-0104

Confidential Form

IV. **A No Contact Order As A Term Of Agreement to Withhold Prosecution/Pretrial Diversion**

[Ind. Code § 33-14-1-7](#) gives the Court the authority to enter a No Contact Order as a term of an agreement to withhold prosecution/pretrial diversion. If the Court issues a No Contact Order, then the Court shall distribute the Order to the Clerk of the Court to comply with [Ind. Code § 5-2-9](#), and the prosecutor shall file a Confidential Form. It is the responsibility of the judicial officer issuing the No Contact Order to complete Sections I and II (pages 2 and 3) of the Confidential Form. A violation of this Order constitutes a basis for removal from the diversion program and a resumption of the criminal prosecution. The prosecutor may also file a new charge of Invasion of Privacy.

USE FORM NC-0101

No Contact Order Upon Agreement To
Withhold Prosecution/Pretrial Diversion

USE COVER SHEET

USE FORM PO-0104

Confidential Form

V. No Contact Orders In Juvenile Delinquency and CHINS Cases

A. Who is eligible to apply?

Any of the following can apply to the Court for an Order, which orders a person to refrain from the direct and/or indirect contact with a child:

- The Prosecuting Attorney
- The Attorney for the County Office of Family and Children
- The Probation Officer
- The Case Worker
- The Department of Correction
- The Guardian *ad litem* or Court Appointed Special Advocate (CASA)

B. Verification

The Petition for the No Contact Order must be verified. [Ind. Code § 31-37-25-2](#) and [Ind. Code § 31-34-25-2](#).

C. Requirements of the Petition

The petition shall be entitled, “In the Matter of a No Contact Order for _____” and must allege:

- That the Respondent is likely to have direct or indirect contact with the child in the absence of an Order;
- That the child has been adjudicated a delinquent child or a CHINS; and,
- That the proposed Order is in the best interests of the child.

D. Hearings and Findings on the Petition

- The hearing on the Petition can either be held concurrently with a Dispositional hearing, or independently of other hearings.
- If the Court finds that the allegations contained in the Petition are true, then the Court shall issue an Order.
- It is the responsibility of the judicial officer issuing the No Contact Order to complete Sections I and II (pages 2 and 3) of the Confidential Form.
- The Juvenile Court should assure notice and an opportunity to be heard is provided to the Respondent for enforceability under full faith and credit and Invasion of Privacy laws.

E. Distribution of Order

The Order shall be distributed to the Clerk for compliance with the provisions of [Ind. Code § 5-2-9](#) regarding distribution of the Order to a repository under the statute.

F. No Contact Orders in a Dispositional Decree

[Ind. Code § 31-37-19-1](#) (7) gives the Court the authority to enter a No Contact Order in a Delinquency dispositional order. [Ind. Code § 31-34-20-1](#) (7) gives the Court the authority to enter a No Contact Order in a CHINS Dispositional Order. If the Court issues a No Contact Order, then the Court shall distribute the Order to the Clerk of the Court to ensure compliance with [Ind. Code § 5-2-9](#), and the Petitioner shall file a Confidential Form with the Clerk. It is the responsibility of the judicial officer issuing the No Contact Order to complete Sections I and II (pages 2 and 3) of the Confidential Form.

USE FORM NC-0103 No Contact Order – CHINS

USE COVER SHEET

USE FORM PO-0104 Confidential Form

USE FORM NC-0104 No Contact Order – Delinquency

USE COVER SHEET

USE FORM PO-0104 Confidential Form

VI. Whose Responsibility is it to Complete the First Page of the Confidential Form?

[Ind. Code §31-34-20-2](#)(2) requires the Petitioner to file the Confidential Form in a CHINS case when a No Contact Order is issued.

[Ind. Code §31-37-19-22](#)(2) requires the Petitioner to file the Confidential Form in a delinquency case when a No Contact Order is issued as part of a dispositional decree.

[Ind. Code §33-14-1-7](#) (f)(2) requires the prosecutor to file the Confidential Form in a criminal case when a No Contact Order is issued as a condition of pretrial diversion.

[Ind. Code §35-33-8-3.2](#) (e)(2) requires the prosecutor to file the Confidential Form in a criminal case when a No Contact Order is issued as a condition of pretrial release.

[Ind. Code §35-38-2-2.3](#) (f)(2) requires the prosecutor to file the Confidential Form in a criminal case when a No Contact Order is issued as a condition of probation.

CHAPTER 7

WORKPLACE VIOLENCE RESTRAINING ORDERS (WVRO)

SUMMARY: Under [Ind. Code § 34-26-6](#), Courts can issue Orders to protect an employee from **unlawful violence** or **credible threats of violence**. These Orders can be requested by the **employer** of a person who is the target of unlawful violence or credible threats of violence, and will be enforced by law enforcement officers. These Orders are called “**Workplace Violence Restraining Orders**” (WVRO's).

There are two (2) kinds of WVRO's—a Temporary Restraining Order (TRO) issued without a hearing that lasts a maximum of 15 days; and, an Injunction (an Order issued after a hearing) that lasts up to three (3) years.

There are three (3) parties named in the caption of a WVRO case: the employer, who is the Plaintiff; the person to be restrained, who is the Defendant; and, the Protected Employee. Only the employer may ask the Court for these Orders. The Plaintiff needs to file a Petition in a Court of record, on behalf of his or her employee, against the Defendant to get this type of Order. There will be a Court hearing within 15 days of the filing of the Petition.

I. Jurisdiction and Venue

A. Unlike the Indiana Civil Protection Act ([Ind. Code § 34-26-5](#)), the Indiana Workplace Violence Restraining Order (WVRO) statute does not specifically contain any section addressing jurisdiction or venue. Therefore, ordinary rules governing jurisdiction and venue apply. See Trial Rules 4.4 and 75. Under the “Long Arm” provisions of Trial Rule 4.4 (A)(8), there is strong support for commencing litigation in the *county of the employee’s workplace* where the unlawful violence has occurred or has been threatened.

B. Person Restrained

A WVRO can be entered against a Defendant whose egregious conduct affects the employee at the employee’s workplace. However, the Defendant may work and reside in a different county or state.

C. Workplace-Based

[Ind. Code § 34-26-6-6](#) makes it apparent that WVRO actions are to be centered on the employee’s workplace. Therefore, the location of the unlawful violence is a crucial factor. See [Ind. Code § 34-26-6-1](#) and [Ind. Code § 34-26-6-6](#), which emphasize the *employee’s place of work* as a necessary element of this type of action.

D. Acts Serving as a Basis for Jurisdiction

Indiana Trial Rule 4.4(A)(8) provides: “Any person or organization that is a nonresident of this state, a resident of this state who has left the state, or a person whose residence is unknown, *submits to the jurisdiction of the courts of this state as to any action arising from the following acts committed by him or her or his or her agent: (8) abusing, harassing, or disturbing the peace of, or violating a protective or restraining order for the protection of, any person within the state by an act or omission done in this state, or outside this state if the act or omission is part of a continuing course of conduct having an effect in this state.* In addition, a court of this state may exercise jurisdiction on any basis not inconsistent with the Constitutions of this state or the United States.” (emphasis added)

E. Authority of the Court to Issue a WVRO

Workplace Violence Restraining Orders provide injunctive relief. Only Courts that have jurisdiction to enter Orders for injunctive relief may issue WVRO’s.

II. **Who Can Get a Court Order Under This Law?**

- A. This statute allows employers to obtain Court Orders prohibiting unlawful violence or credible threats of violence against their employees. To get an Order under this law, the Plaintiff must be an “employer.”
- B. An “employer” means an individual, a partnership, an association, a limited liability company, a corporation, a business trust, the state, a governmental agency, or a political subdivision that has at least two (2) employees during any work week. See [Ind. Code § 34-26-6-4](#).
- C. When the employer is a corporation, the employer must be represented by counsel in the WVRO case. See [Ind. Code § 34-9-1-1](#).

III. **Whom Can an Employer Protect Under This Law?**

- A. Under this statute, employers can obtain Workplace Violence Restraining Orders (WVRO's) that last up to 3 years on behalf of their employees.
- B. An “employee” means a person employed or permitted to work or perform a service for remuneration, a member of a board of directors for a private, public, or quasi-public corporation, an elected or appointed public officer, and a volunteer or an independent contractor who performs services for an employer at the employer's place of work. See [Ind. Code § 34-26-6-3](#) for the definition of “employee.”

IV. **GROUND'S FOR OBTAINING A WVRO**

- A. An employer may seek a temporary restraining order or an injunction on behalf of an employee to prohibit further violence or threats of violence by a person under this law if:
1. An employee has experienced unlawful violence or a credible threat of violence from any person;
 2. The unlawful violence or credible threat of violence did occur at the employee's workplace or can reasonably be construed to be carried out at the employee's workplace;
 3. The defendant's conduct is not part of a labor dispute; and,
 4. The defendant is not engaged in constitutionally protected activity. See [Ind. Code § 34-26-6-6](#); [Ind. Code § 34-26-6-0.5](#); [Ind. Code § 34-26-6-15\(1\)](#).
- B. **"Unlawful violence"**, [Ind. Code § 34-26-6-5](#), is defined as Battery under [Ind. Code § 35-42-2](#), or Stalking under [Ind. Code § 35-45-10](#). A "battery" occurs when one person knowingly or intentionally touches another person in a rude, insolent, or angry manner, except in self-defense or defense of others. "Stalking" means a knowing or intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened, and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity.
- "Credible threat of violence"** means a knowing and willful statement or course of conduct that does not serve a legitimate purpose and that causes a reasonable person to fear for the person's safety or for the safety of the person's immediate family. See [Ind. Code § 34-26-6-2](#).
- D. **"Course of conduct"** means a pattern of conduct composed of a series of acts over time, however short, indicating a continuity of purpose that includes:
1. Following or stalking an employee to or from the employee's place of work;
 2. Entering the employee's place of work;
 3. Following an employee during the employee's hours of employment;
 4. Making telephone calls to an employee during the employee's hours of employment;
 5. Sending correspondence to an employee by means such as public or private mail, interoffice mail, fax, or electronic mail. See [Ind. Code § 34-26-6-1](#).

V. Forms Needed to Obtain a WVRO or to Object to a WVRO

A. Where Found

Workplace Violence forms are available from the Court Clerk's office, legal publishers, or from the following Web site:

<http://www.in.gov/judiciary/forms/po.html>

See Instructions for Petitions to Prohibit Workplace Violence, including Instructions for Plaintiffs and Defendants, **FORM WV-0100**, for additional information regarding the use of the forms and the steps to be followed in initiating or responding to this type of action.

B. Mandatory Use of Designated Forms

The Division of State Court Administration has developed forms, instructions, and rules for the scheduling of hearings and other procedures under this chapter. A party to an action under this chapter must use the forms developed by the Division of State Court Administration. However, an Order or Injunction issued under this section is not rendered unenforceable solely because it is not issued on forms adopted and approved by the Division of State Court Administration. See [Ind. Code § 34-26-6-13](#).

1. Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against Employee ("Petition"). This form tells the Judge the facts of the Plaintiff's case and what relief the Plaintiff wants the Court to order. The use of this form is mandatory.

USE FORM WV-0101 Petition of Employer for Injunction
Prohibiting Violence or Threats of Violence
Against Employee / Application for
Temporary Restraining Order

USE FORM PO-0104 Confidential Form

2. Order to Show Cause and Temporary Restraining Order. The Order to Show Cause, when signed by the Judge, tells the Defendant to come to Court for the hearing. It may include a Temporary Restraining Order that takes effect immediately and stays in effect until the hearing (not more than 15 days). A Temporary Restraining Order is one type of WVRO. It is the responsibility of the judicial officer issuing the Order to complete Sections I and II (pages 2 and 3) of the Confidential Form.

USE FORM WV-0102 Order to Show Cause (Workplace Violence)
& Temporary Restraining Order

USE COVER SHEET

USE FORM PO-0104 Confidential Form

3. Response to Petition of Employer for Injunction Prohibiting Violence or Threats of Violence (“Response”). The Defendant may file a responsive pleading that explains, excuses, justifies, or denies the alleged unlawful violence or credible threat of violence. The Defendant files this form to state objections to the relief the Plaintiff has asked for, and to give his or her side. The use of this form is mandatory.

USE FORM WV-0104 **Response to Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against Employee**

4. Order After Hearing on Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against Employee (“Injunction”). This is the form Order signed by the Judge after the hearing. This Order may remain in effect for not more than three (3) years. It is the responsibility of the judicial officer issuing the Order to complete Sections I and II (pages 2 and 3) of the Confidential Form. The Order issued after a hearing, or Injunction, is the other type of WVRO.

USE FORM WV-0106 **Order After Hearing on Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against Employee**

USE COVER SHEET

USE FORM PO-0104 Confidential Form

5. Proof of personal service and proof of service of completed response. These forms are used to show that the other party has been served with the legal documents as required by law.

USE FORM WV-0103 (Plaintiff) Proof of Personal Service
(Workplace Violence)

and

FORM WV-0105 (Defendant) Proof of Service of Completed
Response (Workplace Violence)

C. Service of Process: Time Limits and Manner of Service.

1. Time limits for service on Defendant. A Defendant shall be personally

served with a copy of the Petition, Temporary Restraining Order (if any), and a notice of the hearing not less than five (5) days before the hearing. However, the Court may, for good cause, upon the filing of a motion by a Plaintiff or upon the Court's own motion, shorten the time for service on the Defendant. See [Ind. Code § 34-26-6-10](#).

2. Delivery to law enforcement agency. The Court shall order a Plaintiff or the attorney for a Plaintiff to deliver a copy of each: (a) Temporary Restraining Order; (b) Injunction; (c) modification of a Temporary Restraining Order or an Injunction; and, (d) termination of a Temporary Restraining Order or an Injunction to a law enforcement agency that is requested by a Plaintiff and approved by the Court. The copies under subdivisions (a) through (d) must be delivered to the law enforcement agency by the close of the business day on which the Order is granted. Each law enforcement agency shall make information on the existence and status of an Order available to a law enforcement officer responding to the scene of unlawful violence or a credible threat of violence. See [Ind. Code § 34-26-6-11](#).

NOTE: Pursuant to [Ind. Code § 34-26-6-13\(c\)](#), the information in a Temporary Restraining Order or an Injunction relating to harassment or domestic or family violence must be transmitted to the Indiana data and communication system (IDACS) as required under [Ind. Code § 34-26-5-18](#).

3. Proof of service forms for WVRO's state that someone who is not a party to the legal action and who is 18 years of age or older may deliver ("serve") certain papers to the other party. See **Forms WV-0103 and WV-0105**.

VI. Temporary Restraining Order (Immediate TRO) Issued Without a Hearing

- A. Immediate Temporary Restraining Order (TRO) issued without hearing. If a Plaintiff (employer) seeks to obtain, on behalf of an employee, an immediate Temporary Restraining Order, without a hearing at which the other person (Defendant) has an opportunity to be present or heard, to prohibit further violence or threats of violence by that person, the employer's Petition must include: (1) an affidavit that shows, to the satisfaction of the Court, reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the Defendant; and (2) demonstrates that great or irreparable harm has been suffered by the employee or will be suffered by the employee. An affidavit is not required if the employer has personal knowledge of the actions of the Defendant. See [Ind.](#)

[Code § 34-26-6-7.](#)

- B. Trial Rule 65(B). The Plaintiff, or the Plaintiff's attorney, must comply with Trial Rule 65 with respect to required notice to the Defendant. Certification of compliance with Trial Rule 65 is accomplished when the Plaintiff completes paragraph 6 of the Petition. For more information on avoiding prohibited *ex parte* communications with only one party, please refer to Chapter 3 of this Deskbook on *Ex Parte* Proceedings and Orders. See [Ind. Code § 34-26-6-7](#); TR 65(B); **FORM WV-0101**; *In Re Anonymous*, [729 N.E.2d 566](#) (Ind. 2000); and *In the Matter of Anonymous*, [786 N.E.2d 1185](#) (Ind. 2003).
- C. Early Hearing. A Court shall hold a hearing not more than fifteen (15) days after a Petition for an immediate Temporary Restraining Order is filed. See [Ind. Code § 34-26-6-8](#).

NOTE: Trial Rule 65(F) provides: “(F) Statutory Provisions Unaffected by this Rule. Nothing in this rule shall affect provisions of statutes extending or limiting the power of a court to grant injunctions.” The conflict between the statute’s time period and Trial Rule 65 (B) is resolved.

VII. Injunction or Restraining Order Issued After a Hearing (Not Immediate)

- A. Injunction or Restraining Order. If a Plaintiff (employer) seeks to obtain an Injunction or Restraining Order, without immediate relief, on behalf of an employee to prohibit further violence or threats of violence by a person, the Petition must state facts to support the claim that:
1. the employee has suffered unlawful violence or a credible threat of violence from the person; and,
 2. the unlawful violence has been carried out at the employee's place of work or the credible threat of violence can reasonably be construed to be carried out at the employee's place of work by the Defendant.
See [Ind. Code § 34-26-6-6](#).
- B. Trial Rule 65(B)
Since no immediate, *ex parte* relief is sought, Trial Rule 65(B) is inapplicable.
- C. Notice
Notice of the hearing shall be given to the Defendant. No affirmative relief shall be granted until the hearing is held and it is determined the Defendant was given sufficient notice and opportunity to be heard.

VIII. Court's Role at the Hearing

At the hearing, the Court shall: (1) receive testimony and may make independent inquiry; and (2) if the Defendant is a current employee of the entity requesting the Injunction, receive testimony of the employer's decision to retain, terminate, or otherwise discipline the Defendant. See [Ind. Code § 34-26-6-8](#).

IX. Proof Required

If the Judge finds by *clear and convincing evidence* that the Defendant engaged in unlawful violence or made a credible threat of violence, the Judge shall issue an Injunction prohibiting further unlawful violence or credible threats of violence. See [Ind. Code § 34-26-6-8](#). It is the responsibility of the judicial officer issuing the Order to complete Sections I and II (pages 2 and 3) of the Confidential Form.

USE FORM WV-0106

Order After Hearing on Petition of
Employer for Injunction Prohibition
Violence or Threats of Violence Against
Employee

USE COVER SHEET

USE FORM PO-0104

Confidential Form

X. Warning Required in Every WVRO

Under [Ind. Code § 34-26-5-3\(c\)](#), the following statements must be printed in boldface type or in capital letters on a Workplace Violence Restraining Order:

VIOLATION OF THIS ORDER IS PUNISHABLE BY CONFINEMENT IN JAIL, PRISON, AND/OR A FINE.

IF SO ORDERED BY THE COURT, THE RESPONDENT IS FORBIDDEN TO ENTER OR STAY AT THE PETITIONER'S RESIDENCE, EVEN IF INVITED TO DO SO BY THE PETITIONER OR ANY OTHER PERSON. IN NO EVENT IS THE ORDER FOR PROTECTION VOIDED.

PURSUANT TO [18 U.S.C. 2265](#), THIS ORDER FOR PROTECTION SHALL BE GIVEN FULL FAITH AND CREDIT IN ANY OTHER STATE OR TRIBAL LAND AND SHALL BE ENFORCED AS IF IT WERE AN ORDER ISSUED IN THAT STATE OR TRIBAL LAND. PURSUANT TO [18 U.S.C. 922\(g\)](#), ONCE A RESPONDENT HAS RECEIVED NOTICE OF THIS ORDER AND AN OPPORTUNITY TO BE HEARD, IT IS A FEDERAL VIOLATION TO PURCHASE, RECEIVE, OR POSSESS A FIREARM WHILE SUBJECT TO THIS

ORDER IF THE PROTECTED PERSON IS:

- (A) THE RESPONDENT'S CURRENT OR FORMER SPOUSE;**
- (B) A CURRENT OR FORMER PERSON WITH WHOM THE RESPONDENT RESIDED WHILE IN AN INTIMATE RELATIONSHIP; OR**
- (C) A PERSON WITH WHOM THE RESPONDENT HAS A CHILD.**

INTERSTATE VIOLATION OF THIS ORDER MAY SUBJECT THE RESPONDENT TO FEDERAL CRIMINAL PENALTIES UNDER [18 U.S.C. 2261](#) AND [18 U.S.C. 2262](#).

XI. Term of Injunction and Renewal/Modification/Termination

- A. An Injunction issued under [Ind. Code § 34-26-6-8](#), after a hearing, may remain in effect for not more than three (3) years. See [Ind. Code § 34-26-6-9](#).
- B. Not more than three (3) months before the expiration of an Injunction, a Plaintiff may apply for a renewal of the Injunction by filing a new Petition under [Ind. Code § 34-26-6-8](#). See [Ind. Code § 34-26-6-9](#).
- C. No specific forms for requesting a renewal or modification of a WVRO are currently available. However, Protection Order forms for renewal or modification may be adapted. **SEE FORM PO-0115 and FORM PO-0116.**
- D. Whenever a WVRO is extended, renewed, or modified, the Court must use **FORM PO-0117**.
- E. Whenever a WVRO is terminated, the Court must use **FORM PO-0118**. This Form is also appropriate when the Court holds a hearing resulting in the termination of a TRO and issuance of a WVRO Injunction.

XII. Fees

A filing fee may not be charged for a WVRO. See [Ind. Code § 34-26-6-14](#).

XIII. Why a Request for a WVRO May be Denied

- A. Orders of this type are only granted in exceptional circumstances. Court Orders are not issued just because a person asks for one. It is important that an employer pay attention to every detail in filling out the Petition. The Court reviewing the Petition will carefully examine the information in the Petition to determine if the situation meets the statutory, or legal, requirements for a WVRO.
- B. Some of the most common reasons why the WVRO might be denied include:

1. The parties do not fit the statutory, or legal, definition of “employer” and “employee”.
2. The parties do not meet Indiana residency or employment requirements.
3. The factual allegations do not meet the statutory, or legal, definitions of “unlawful violence”, or of a “credible threat of violence”.
4. The allegations are vague. They lack a clear and understandable description of the time, place, or acts of the incident.
5. The Plaintiff, who is relying solely on what another person saw or told the Plaintiff, failed to attach a sworn affidavit from that other person as required.

XIV. Delivery of Documents to Law Enforcement

Pursuant to [Ind. Code § 34-26-6-11](#), the Court shall order the Plaintiff or the attorney for the Plaintiff to deliver a copy of each: (1) Temporary Restraining Order; (2) Injunction; (3) modification of a Temporary Restraining Order or an Injunction; and (4) termination of a Temporary Restraining Order or an Injunction, to a law enforcement agency that is requested by a Plaintiff and approved by the Court. The copies under subdivisions (1) through (4) must be delivered by the close of the business day on which the Order is granted. Each law enforcement agency shall make information on the existence and status of an Order available to a law enforcement officer responding to the scene of unlawful violence or a credible threat of violence.

NOTE: Pursuant to [Ind. Code § 34-26-6-13\(c\)](#), the information in a Temporary Restraining Order or an Injunction relating to harassment or domestic or family violence must be transmitted to the Indiana data and communication system (IDACS) as required under [Ind. Code § 34-26-5-18](#).

XV. Intentional Violations

- A. [Ind. Code § 34-26-6-12](#) provides: “An intentional violation of a temporary restraining order or an injunction issued under this chapter is punishable as set forth under [Ind. Code § 35-46-1-15.1](#).” [the Invasion of Privacy crime]
- B. [Ind. Code § 35-46-1-15.1\(3\)](#) provides that a person who knowingly or intentionally violates a Workplace Violence Restraining Order issued under [Ind. Code § 34-26-6](#) commits Invasion of Privacy, a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction for an offense under this section.

CHAPTER 8

ENFORCEMENT OF PROTECTION ORDERS

In order to give credibility to Protection Orders and to provide some level of safety to victims of family or domestic violence, stalking, and sex offenses, it is imperative that police reasonably investigate reported violations. Prosecutors must be vigilant in prosecuting those cases where there is sufficient credible evidence of violations.

I. Criminal Prosecution for Invasion of Privacy [Ind. Code § 35-46-1-15.1](#) as amended by P.L. 133-2002

- A. The Indiana criminal code provides for criminal prosecution for enforcement of:
 - 1. Protection Orders issued under [Ind. Code § 34-26-5](#)
 - 2. No Contact Orders issued under
 - a. [Ind. Code § 35-33-8-3.2](#) Bond
 - b. [Ind. Code § 35-38-2-2.3](#) Probation
 - c. [Ind. Code § 31-34-20-1](#), [Ind. Code § 31-37-19-1](#), [Ind. Code § 31-37-5-6](#), or [Ind. Code § 31-32-13](#) Dispositional decrees for child in need of services or delinquent child
 - d. [Ind. Code § 33-14-1-7](#) Pretrial diversion
 - 3. Workplace Violence Restraining Orders issued under [Ind. Code § 34-26-6](#)
- B. Penalties for Invasion of Privacy
 - 1. The first offense is a Class A misdemeanor, punishable by a maximum of one (1) year of incarceration and up to a \$5,000.00 fine.
 - 2. If a Defendant has a prior unrelated conviction for Invasion of Privacy, the charge can be enhanced to a Class D felony with a maximum penalty of three (3) years of incarceration and up to a \$10,000.00 fine.
 - 3. It is possible that a Court could impose consecutive sentences for other criminal acts which violate the Order, such as Battery, Mischief, or Trespass. [Ind. Code § 35-50-1-2](#) governs consecutive and concurrent sentences. That statute requires consecutive sentences for crimes committed while a Defendant is out on bond or personal recognizance, or on probation.

II. Revocation of Bail or Pretrial Release

- A. Where a No Contact Order has been issued under [Ind. Code § 35-33-8-3.2](#) as a condition of bond or release on personal recognizance, a violation of such an Order is appropriately a basis for revocation.
- B. Prosecutors and Courts should proceed with revocation of pretrial release just as if the Defendant had committed any other serious criminal offense while on bond or pretrial release. See [Ind. Code § 35-33-8-5](#) and [Ind. Code § 35-40-6-6](#).

- C. The prosecutor may also file a new charge of Invasion of Privacy, [Ind. Code § 35-46-1-15.1](#) as amended by P.L. 133-2002, and ask for consecutive sentences if the Defendant is convicted of both crimes.

III. Revocation of Probation

- A. Where a No Contact Order has been issued under [Ind. Code § 35-38-2-2.3](#) as a condition of probation, a violation is an appropriate basis for revocation of the Defendant's probation. Probation officers, prosecutors, and Courts should proceed with revocation of probation just as if the Defendant committed any other serious criminal offense while serving probation.
- B. The prosecutor may also file a new charge of Invasion of Privacy, [Ind. Code § 35-46-1-15.1](#) as amended by P.L. 133-2002, and ask for consecutive sentences if the Defendant is convicted of both crimes.

IV. Termination of Pretrial Diversion

- A. Where a prosecutor has included a No Contact Order issued under [Ind. Code § 33-14-1-7](#) in a pretrial diversion contract, a violation of the No Contact Order is a material violation of the contract. The prosecutor may terminate the contract and reactivate the original prosecution.
- B. The prosecutor may also file a new charge of Invasion of Privacy, [Ind. Code § 35-46-1-15.1](#) as amended by P.L. 133-2002, and ask for consecutive sentences if the Defendant is convicted of both crimes.

V. Problems with using contempt to enforce Protection Orders, No Contact Orders, and Workplace Violence Restraining Orders

- A. General Considerations
A violation of a Protection Order, No Contact Order, or a Workplace Violence Restraining Order is a crime. Courts cannot legally use the remedy of civil contempt to punish a violator; rather, it is meant to be coercive in nature. Although the remedy of indirect civil contempt does exist for enforcing these types of Orders, most prosecutors will elect criminal proceedings over indirect criminal contempt proceedings.
- B. Indirect criminal contempt is provided for under [Ind. Code § 34-47-3](#) and provides a remedy for willful disobedience of any lawfully issued Order or process. A Respondent who violates these types of Court Orders may be punished for indirect criminal contempt.
- C. There are numerous procedural requirements and issues for indirect criminal contempt, including:

Action is brought by State; requires a separate case; contemner is entitled to due process (including appointment of counsel if indigent), notice, and pretrial release; and, double jeopardy is an issue if contemner is incarcerated. Webster v. State, [673 N.E.2d 509](#) (Ind. Ct. App. 1996).

NOTE: Judges may refer to the “contempt” section of the Civil Benchbook for an in-depth analysis of the types of contempt and their procedural requirements.

- D. Indirect civil contempt has been used to enforce violations of Protection Orders, but it is problematic. *See* Carter v. Johnson, [745 N.E.2d 237](#) (Ind. Ct. App. 2001) and Flash v. Holtsclaw, [789 N.E.2d 955](#) (Ind. Ct. App. 2003).

COMMON DOMESTIC VIOLENCE CHARGES

Invasion of Privacy (Class A Misdemeanor) [Ind. Code § 35-46-1-15.1](#) through-20

Knowingly violating a protection, no-contact, or workplace violence restraining order. This crime includes violations of such orders issued by other states and Indian tribes. The offense is a **Class D felony** if the defendant has a prior, unrelated conviction for Invasion of Privacy (does not need to be on the same victim, or involve the same court order).

Battery (Class B Misdemeanor) [Ind. Code §35-42-2-1](#)

Knowingly touching another person in a rude, insolent, or angry manner. The offense is a **Class A misdemeanor** if the act results in bodily injury to any person other than the defendant. The crime is a **Class D felony** if it is committed by a person age 18 or older on a person who is under the age of 14 and if it results in bodily injury to the victim. The crime is also a **Class D felony** if the defendant has a prior, unrelated conviction for Battery on the same victim, and if the victim suffers bodily injury during the instant offense.

Domestic Battery (Class A Misdemeanor) [Ind. Code §35-42-2-1.3](#)

Knowingly touching another person in a rude, insolent, or angry manner, and causing bodily injury to that victim, while the defendant and the victim are: current or former spouses; have a child in common; or, live together or have lived together as if they were spouses. The offense is a **Class D felony** if the defendant has a prior, unrelated conviction for Domestic Battery (does not need to be on the same victim).

Criminal Recklessness (Class B Misdemeanor) [Ind. Code §35-42-2-2](#)

Recklessly performing an act that creates a substantial risk of bodily injury to another person. The offense is a **Class A misdemeanor** if the defendant uses a motor vehicle to commit it (and a conviction *requires* a suspension of the defendant's driver's license for a period of 60 days to 2 years ([Ind. Code § 9-30-13-1](#)). The offense is a **Class D felony** if it is committed while armed with a deadly weapon, or if it results in serious bodily injury to another person.

Criminal Confinement (Class D Felony) [Ind. Code §35-42-3-3](#)

Knowingly confining another person without that person's consent, *or* removing a person by force, the threat of force, fraud, or enticement from one place to another.

Intimidation (Class A Misdemeanor) [Ind. Code §35-45-2-1](#)

Communicating a threat to another person with the intent that the other person engage in conduct against that person's will, or be placed in fear of retaliation for a prior lawful act. The offense is a **Class D felony** if the threat is to commit a forcible felony, or if the person to whom the threat is communicated is a witness (or the spouse or child of a witness) in any pending criminal proceeding against the person making the threat.

Harassment (Class B Misdemeanor) [Ind. Code §35-45-2-2](#)

Communicating with another person by telephone, mail, e-mail, etc. with the intent to harass, annoy, or alarm another person but with no intent of legitimate communication. The offense includes telephone calls regardless of whether a conversation takes place.

Criminal Mischief (Class B Misdemeanor) [Ind. Code §35-43-1-2](#)

Recklessly damaging or defacing the property of another person without that person's consent. The offense is a **Class A misdemeanor** if it causes a monetary loss of at least \$250 but less than \$2,500, or if the property damaged was a moving motor vehicle. The crime is a **Class D felony** if it causes a monetary loss of at least \$2,500. If a defendant uses a motor vehicle to

commit Criminal Mischief, the sentencing court may impose an optional suspension of the defendant's driver's license for a period of 60 days to 2 years ([Ind. Code §9-30-13-3](#)).

Residential Entry (Class D Felony)

[Ind. Code §35-43-2-1.5](#)

Knowingly breaking and entering the dwelling of another person.

Criminal Trespass (Class A Misdemeanor)

[Ind. Code §35-43-2-2](#)

- Knowingly entering the real property of another person while not having a contractual interest in that property, and after having been denied entry by that person or the person's agent.
- Knowingly refusing to leave the real property of another person while not having a contractual interest in that property, and after having been asked to leave by that person or the person's agent.
- Knowingly interfering with the possession or use of the property without the other person's consent.
- Knowingly entering the dwelling of another person while not having a contractual interest in the property, without the other person's consent.

The offense is a **Class D felony** if the defendant has a prior, unrelated conviction for Criminal Trespass on the same property.

Stalking (Class D Felony)

[Ind. Code §35-45-10-5](#)

A knowing repeated or continuing harassment of another person that causes the other person that causes the other person to feel terrorized, frightened, intimidated, or threatened, and that would also cause a reasonable person to feel terrorized, frightened, intimidated, or threatened. The crime is a **Class C felony** if it occurs while a protection, no-contact, or workplace violence restraining order is in effect; *or*, if it is accompanied by a threat of serious bodily injury, sexual battery, or death; *or*, if it is committed while the defendant already has an open criminal complaint of stalking pending against him or her involving the same victim. The crime is a **Class B felony** if it occurs while the defendant is armed with a deadly weapon, *or* if the defendant has a prior, unrelated conviction for stalking the same victim.

Unlawful Possession of a Firearm

[Ind. Code §35-47-4-6](#)

by a Domestic Batterer (Class A Misdemeanor)

Knowingly possessing a firearm after having been convicted of Domestic Battery.

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CHAPTER 9 MODIFICATION/TERMINATION

I. Modification of Protection Orders

A. Civil Protection Orders

1. A Petitioner may file a Petition to modify a Protection Order by filing Protection Order Form **PO-0115**. See [Ind. Code § 34-26-5-8](#) and [Ind. Code § 34-26-5-9](#). If the modification would not require a hearing under [Ind. Code § 34-26-5-9](#) (b), the Court may grant the Petition for modification *ex parte*, (e.g. an address change). Even if the modification does not require a hearing, the Court must take steps to ensure that the Respondent is served with a copy of the modified Order.

USE FORM PO-0115 Petition to Modify an Order for Protection and Request for a Hearing

USE FORM PO-0117 Notice of Extension or Modification

2. If the Petition for modification requests the Respondent be removed from a residence, or that possession of personal property be transferred to a Petitioner, it may be granted immediately. However, the Court must set a hearing to occur within thirty (30) days.
3. If the Petition for modification requests the following relief:
 - any change in visitation, or child support;
 - a request that the Respondent pay attorney fees;
 - a request that the Respondent make mortgage or rental payments;
 - a request that the Respondent reimburse the Petitioner for expenses related to the domestic or family violence, stalking, or a sex offense;
 - prohibit the Respondent from using or possessing a firearm, ammunition, or deadly weapon or order the Respondent to surrender a firearm, ammunition, or deadly weapon;a hearing must be set before the relief can be granted.
4. Termination or modification at request of Respondent. The statute makes no provision for modification or termination at the request of the Respondent. A Respondent seeking relief from the Order should proceed under Trial Rule 59 or 60.

B. Juvenile and CHINS No Contact Orders

1. A parent, guardian, prosecutor, Attorney for the Office of Family and Child Services, a probation officer, a caseworker, the Department of Correction, or a Guardian *ad litem* may request that a No Contact Order be modified on behalf of a child.
2. The Court may modify a No Contact Order if it is found to be in the best interest of the child.
3. If the Court grants the request for modification, the Court must take steps to ensure that the restrained person is served with a copy of the modified Order.

BEST PRACTICE NOTE: Since the restrained person is required to sign a No Contact Order, the Committee recommends that judicial officers set requests for modification of these Orders for hearing.

USE FORM PO-0117

Notice of Extension or Modification

II. Termination of Protection Orders

A. Civil Protection Orders

1. A Petitioner may request that the Court dismiss and terminate an Order for Protection by filing **FORM PO-0108**. The Petitioner may also make an oral request, on the record, for the dismissal or termination of an Order for Protection. If such a request is made the Court shall, without delay or any conditions, dismiss the case without prejudice. [Ind. Code § 34-26-5-12](#).

USE FORM PO-0108

Petitioner's Verified Request for Dismissal

USE FORM PO-0109

Order Dismissing Petition for Order for Protection

USE FORM PO-0118

Notice of Termination

2. If the *Ex Parte* Order has been set for hearing and the Petitioner fails to appear, the Court may or may not choose to dismiss the matter, without prejudice, just as it would any other civil action.
3. If there is no request by a party to terminate a Protection Order it will terminate on the date designated in the Order. If no date is designated, the Order will terminate two years from the date of issuance.

4. If an Indiana Protection Order is terminated, the person who obtained the Order must file a Notice of Termination, **FORM PO-0118**, with the Clerk of the Court. [Ind. Code § 5-2-9-6](#) (e).

B. Criminal No Contact Orders

1. When a request is made to terminate a No Contact Order, the Court may choose to set a hearing to determine whether there is any additional threat of harm to the victim/witness or to ensure that the victim is not being coerced in any way into requesting the termination of the No Contact Order. Unlike a Protection Order, the Court is not required to dismiss a No Contact Order on the victim's request. The Notice of Termination **FORM PO-0118** should be completed if a dismissal is granted. See [Ind. Code § 5-2-9-6](#) (e).
2. The Court may consider notifying a victim advocate, if one is available, to speak with the victim regarding the request for termination. The Committee recommends that the judicial officer speak with the victim advocate on the record in order to avoid improper *ex parte* communications.
3. If an Order is issued as a condition of pretrial release, it terminates upon final disposition of the case (unless terminated earlier by Order of the Court). If the Order is issued as a condition of probation, it expires at the time the probation ends. The Notice of Termination, **FORM PO-0118**, should be completed by the prosecutor.

USE FORM PO-0118

Notice of Termination

C. CHINS/Juvenile

The persons who may request that a court terminate a No Contact Order include: a parent, guardian, prosecutor, Attorney for the Office of Family and Child Services, a probation officer, a caseworker, the Department of Correction, or a guardian *ad litem*.

The Court may dismiss or terminate a No Contact Order if it is found to be in the best interest of the child. The Notice of Termination Form, **PO-0118**, must be completed.

USE FORM PO-0118

Notice of Termination

CHAPTER 10

FEDERAL AND STATE FIREARMS LAWS AND PROTECTION, NO CONTACT, AND WORKPLACE VIOLENCE RESTRAINING ORDERS

I. Indiana Law

A. Surrender of Weapons Under Indiana Law

“After a hearing, the court shall grant such relief as is necessary to bring about cessation of the violence or the threat of violence. This may include an order directing a respondent to surrender to a law enforcement officer or agency all firearms, ammunition and deadly weapons in his control, ownership or possession or in the control or possession of another person on his behalf for the duration of the order unless another date is ordered by the court.” See [Ind. Code § 34-26-5-9\(f\)](#).

B. Law Enforcement Officers

[Ind. Code § 35-33-1-1.5](#) permits law enforcement officers to confiscate and remove firearms, ammunition or a deadly weapon from the scene of a crime involving domestic violence under certain circumstances.

C. Notice to Indiana State Police

This form must be used to give notice to the Indiana State Police of federal firearm restrictions. See [Ind. Code § 34-26-5-9](#) (d) (5).

USE FORM PO-114

Notice to Indiana State Police Re:
Firearms

BEST PRACTICE NOTE: The Committee urges Judges to meet with local law enforcement agencies to develop written protocols for the court-ordered confiscation or surrender of weapons and ammunition. The protocols should include a discussion of storage, as well as rules for returning the weapons.

II. Federal Law

A. Brady Act Federal Firearms Disqualification

If an Order for Protection is enforced after notice and a hearing, and the Petition is filed by or on behalf of the intimate partner or a child of the Respondent, the Respondent is “Brady disqualified.” [18 USC § 922](#) (g)(8).

B. Definition of Intimate Partner

“Intimate partner” is defined as the spouse of the person, former spouse of the person, the parent of a child of the person, and an individual who cohabitates [*sic*] or has cohabited with the person. [18 USC § 921](#)(a)(32).

C. Possession of Firearms Prohibited

It is unlawful for a person who is Brady disqualified to ship, transport, possess, or receive any firearm or ammunition. [18 USC §922](#)(g). This does not apply to official use by law enforcement or military personnel while on duty. [18 USC § 925](#) (a)(1).

D. Brady Law Exception for Government Agencies

An Order for Protection does not create a Brady disqualification for firearms or ammunition imported for, sold or shipped to, or issued for the use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof. [18 USC § 925](#)(a)(1).

E. Please refer to “Protection Orders and Federal Firearms Prohibitions” and “Misdemeanor Crimes of Domestic Violence and Federal Firearms Prohibitions” Bench Cards in Appendix III.

**COMPARISON TABLE OF STATE AND FEDERAL PROTECTION
ORDER AND FIREARMS LAWS**

INDIANA	FEDERAL
Any relationship that qualifies for a protection order qualifies for a restriction on the Respondent's right to possess a firearm IC 34-26-5-2 & -9	Only 3 kinds of relationships qualify for a restriction on the Respondent's right to possess a firearm: (1) current or former spouses; (2) people with a child in common; and, (3) current or former cohabitants 18 USC §§922(g)(8) and 921(32)
Covers firearms, ammunition, and deadly weapons IC 34-26-5-9(c)(4) & -9(f)	Covers firearms and ammunition 18 USC §922(g)
Allows the Court to order confiscation of firearms, ammunition, and deadly weapons, and allows the Court to prohibit possession of those items IC 34-26-5-9(c)(4) & -9(f)	Prohibits possession of firearms and ammunition 18 USC §922(g)
Does not require special language/findings in order to confiscate/prohibit possession	For a protection order to qualify under federal law for a prohibition of possession of firearms or ammunition, it must contain certain language and findings 18 USC §§922(g)(8)(B) & (C)
The Court must hold a hearing before confiscation and/or prohibition can be ordered IC 34-26-5-9(c)(4) & -10(b)(2)	The Court must have held a hearing, the Respondent must have received "actual notice" of the hearing, and the Respondent must have had an opportunity to participate in the hearing 18 USC §922(g)(8)(A)

Federal Firearms Statutes

18 U.S.C. § 922(g)(8)

(g) It shall be unlawful for any person—

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury[.]

...to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(d)(8)

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person--

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

18 U.S.C. § 922(g)(9)

(g) It shall be unlawful for any person –

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

...to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(d)(9)

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person--
(9) has been convicted in any court of a misdemeanor crime of domestic violence.

18 U.S.C. § 921 - Definitions

Firearms

(3) The term “firearm” means

(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;

(B) the frame or receiver of any such weapon;

(C) any firearm muffler or firearm silencer; or

(D) any destructive device.

Such term does not include antique firearms.

Destructive Device

(4) The term “destructive device” means—

(A) any explosive, incendiary, or poison gas—

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses.

(B) any type of weapon (other than shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of any explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term “destructive device” shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordinance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Secretary of the Treasury find is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

Antique Firearm

(16) The term "antique firearm" means—

- (A) any firearm (including any firearm with a match lock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or
- (B) any replica of any firearm described in subparagraph (A) if such replica—
 - (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
 - (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or
- (C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

Intimate Partner

(32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

Misdemeanor Crime of Domestic Violence

(33) (A) Except as provided in subparagraph (C), the term "misdemeanor crime of domestic violence" means an offense that—

- (i) is a misdemeanor under Federal or State law; and
- (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B) (i) A person shall not be considered to have been convicted of such offense for purposes of this chapter unless,

- (I) the person was represented by counsel in the case; or knowingly and intelligently waived the right to counsel in the case; and
- (II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either
 - (aa) the case was tried by a jury, or
 - (bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

18 U.S.C. § 925. Exceptions: Relief from Disabilities

(a) (1) The provisions of this chapter [[18 USCS §§ 921](#) et seq.], except for sections 922(d)(9) and 922(g)(9) and provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

Federal Domestic Violence Firearm Legislation: Scope of the Official Use Exception in Order of Protection Cases

By Nancy Turner, Coordinator, *Police Response to Violence Against Women Project*, IACP

Representatives of the International Association of Chiefs of Police, the Department of Justice, and the Bureau of Alcohol, Tobacco, and Firearms (ATF), met in 2000 to clarify the scope of the Official Use Exception under the Gun Control Act, [18 U.S.C. § 925\(a\)\(1\)](#).

The Gun Control Act makes it unlawful for a person who is the subject of a qualifying protection order to possess or receive firearms or ammunition (section 922(g)(8) of the Gun Control Act). Under ATF's interpretation of the Official Use Exception, this provision does not apply to persons "performing official duties on behalf of a Federal, State or local law enforcement agency."

In a memorandum issued in February 2001, the ATF states that this exception applies "as long as the officer is authorized or required to receive or possess that firearm in his or her official duties." According to the ATF, "the authorization must be by statute, regulation, or official department policy" and applies to both department-issued weapons and those purchased by the officer if he or she is authorized or required to purchase their service weapon.

With respect to the issue of whether officers are allowed under the exception to carry their service weapons while off duty, the ATF says that if officers are "authorized or required to carry their service weapon at all times, the exception applies to their service weapon at all times." The memo goes on to say that "the exception does not apply for officers who are 'off-duty' at the end of a shift, and are not authorized by statute, regulation, or official department policy to possess their duty weapons for the purpose of performing official duties."

While the federal firearm law allows officers who are the subject of a restraining order to receive or possess firearms in the course of their official duties, state and local laws may be more prohibitive. Law enforcement agencies are encouraged to establish guidelines that are more restrictive than the federal provisions to enhance the safety of all concerned and protect against liability. For example, an agency might prohibit officers who are subject to restraining orders from receiving or possessing firearms when they are off duty.

It is still a violation of federal law for an officer subject to a restraining/protection order to receive or possess a firearm in a personal capacity.

CHAPTER 11

FULL FAITH AND CREDIT / NCIC / IDACS

- I. **Full faith and credit with respect to Protection Orders, No Contact Orders and Workplace Violence Restraining Orders is provided for under [Ind. Code § 34-26-5-17](#), which fully incorporates federal full faith and credit requirements. What constitutes “facial validity”, and the prohibition on registration as a prerequisite to enforcement are also important aspects of Indiana law.**

- A. “Full faith and credit” is a legal term that requires jurisdictions to honor and enforce Orders issued by Courts in other jurisdictions.
- B. Full faith and credit for Orders for Protection is an important aspect of the federal Violence Against Women Act (VAWA) of 1994.

“Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.” [18 U.S.C. § 2265](#).

- C. [18 U.S.C. § 2265](#)(b) sets two (2) conditions for validity of an Order for purposes of extending full faith and credit to that Order: jurisdiction and procedural due process.
1. The Court that issued the Order must have had personal jurisdiction over the parties and subject matter jurisdiction over the case.
 2. The Respondent must have had notice and an opportunity to be heard. This does not mean the Respondent has to have been present at a hearing. The Respondent need only be given an opportunity to appear and be heard. *Ex parte* Orders are to be given full faith and credit if the Respondent was (or will be) given notice and an opportunity to be heard within a reasonable period of time.
 3. In addition, [Ind. Code § 34-26-5-17](#) requires the Order to identify the protected person and the Respondent, and to be currently in effect (not expired).
- D. The VAWA full faith and credit provisions apply to both civil and criminal Protection Orders (criminal Protection Orders are No Contact Orders in Indiana), whether issued *ex parte*, after a hearing, or by agreement.

1. Mutual Protection Orders from other jurisdictions may be enforced against the Respondent, but not against the Petitioner unless specific findings of abuse were made against the Petitioner in the Order, or unless the Respondent filed a separate Petition/complaint against the Petitioner. [18 U.S.C. § 2265](#) (c).
 2. Under the VAWA, Orders with respect to custody are entitled to interstate enforcement only to the extent that they are entitled to full faith and credit under another Federal law. See [18 U.S.C. §2266](#) (5), the definition of “Protection order.” Since Indiana’s Protection Order statutes do not provide for custody determinations, custody matters would better be handled under the Uniform Child Custody Jurisdiction Law as a separate cause of action.
 3. Protection Orders issued by tribal Courts are entitled to full faith and credit enforcement.
- E. Certification of a Protection Order is not required under Indiana law. A certified copy usually contains a stamp, a seal, the issuing Judge’s signature, and a notation that it is an authentic duplicate of the original Order. **The VAWA does not require an Order to be “certified” to be enforced.** Protected parties may want certified copies if they plan to register the Order in other jurisdictions.
- F. Application of Laws
1. The jurisdiction issuing an Order for Protection determines the identity of the protected person (s), the terms and conditions of the Order, and its duration.
 2. The enforcing jurisdiction determines the methods of enforcement, whether the responding law enforcement agency has arrest authority, detention and notification procedures, and penalties or sanctions for violations of an Order.
- G. The first page of Indiana’s standard Orders, commonly referred to as a “cover sheet”, was designed to be consistent with jurisdictions surrounding Indiana. The information provided facilitates full faith and credit enforcement. This information is also very helpful for enforcement within Indiana.

II. **NCIC and IDACS contain registries of Orders (among other data) that can be accessed by law enforcement agencies.**

- A. Law enforcement officers may access the national registry to confirm the status of an Order. There are many limitations to this database that result in enforceable Orders not appearing in the registry. The lack of NCIC confirmation should not

be used as a basis to conclude the Order is not in effect or valid. Contact information is included on the first page of Indiana's standard Orders to provide law enforcement officers or Courts with direct access to an issuing jurisdiction or Court.

- B. The Indiana Data and Communication System (IDACS) is maintained by the Indiana State Police and links information into NCIC.
 - 1. [Ind. Code § 34-26-5-18](#) requires the county Sheriff or local law enforcement agencies to enter all Protection Orders, No Contact Orders, and Workplace Violence Restraining Orders into the IDACS system.
 - 2. Like NCIC, IDACS may be used to confirm an Order, but NOT to determine that a Protection Order, No Contact Order, or Workplace Violence Restraining Order does not exist or is not enforceable. Issuing Courts are the best resource for determining the validity of Orders.

Federal Full Faith & Credit Statutes

18 USC §2265. Full Faith and Credit Given to Protection Orders

(a) Full Faith and Credit. - Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.

(b) Protection Order. - A protection order issued by a State or tribal court is consistent with this subsection if -

- (1) such court has jurisdiction over the parties and matter under the law of such State or Indian tribe; and
- (2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of *ex parte* orders, notice and opportunity to be heard must be provided within the time required by State or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) Cross or Counter Petition. - A protection order issued by a State or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if -

- (1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or
- (2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

(d) Notification and Registration. -

(1) Notification. - A State or Indian tribe according full faith and credit to an order by a court of another State or Indian tribe shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State or tribal jurisdiction unless requested to do so by the party protected under such order.

(2) No prior registration or filing as prerequisite for enforcement. - Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State or tribal jurisdiction.

(e) Tribal Court Jurisdiction. - For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

18 USC §2266 Definitions

In this chapter:

(5) Protection order. - The term "protection order" includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court (other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law) whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(8) State. - The term "State" includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.

PROTECTION ORDERS AND FEDERAL FIREARMS PROHIBITIONS

Persons subject to a qualifying protection order under federal law are generally prohibited from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). Violation of this prohibition while the order remains in effect is a federal offense punishable by up to ten years imprisonment.

18 U.S.C. §§ 922(g)(8), 924(a)(2).

The following list enumerates the elements that define a qualifying protection order under the federal firearms prohibition. **Generally, a defendant/respondent subject to a protection order that includes one element (indicated by a diamond) from each section listed below is covered by the federal firearms prohibition.**

I. HEARING

- ❖ Defendant/Respondent received **actual notice** and had an **opportunity to participate**.

II. INTIMATE PARTNER

Plaintiff/Petitioner is an **intimate partner** of the Defendant/Respondent, (18 U.S.C. § 921(a)(32)) that is:

- ❖ a **spouse** of Defendant/Respondent;
- ❖ a **former spouse** of Defendant/Respondent;
- ❖ an individual who is a **parent** of a child of Defendant/Respondent; **or**
- ❖ an individual who **cohabitates or has cohabited** with Defendant/Respondent.

III. RESTRAINS FUTURE CONDUCT

- ❖ The order **restrains** Defendant/Respondent from **harassing, stalking, or threatening** the intimate partner, child of the Defendant/Respondent, or child of the Defendant/Respondent's intimate partner; **or**
- ❖ The order **restrains** Defendant/Respondent from engaging in other conduct that would place the intimate partner in **reasonable fear of bodily injury** to the partner or child.

IV. CREDIBLE THREAT OR PHYSICAL FORCE

- ❖ The order includes a finding that Defendant/Respondent is a **credible threat** to the physical safety of the intimate partner or child; **or**
- ❖ The order, by its terms, explicitly prohibits the use, attempted use, or threatened use of **physical force** against the intimate partner or child that would reasonably be expected to cause bodily injury.

For further information about firearms prohibitions or section 922(g)(8), contact your local Field Division of the Bureau of Alcohol, Tobacco and Firearms by calling (800) 800-3855. For general information about protection orders and firearms, contact the Full Faith and Credit Project at (800) 256-5883.

MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE AND FEDERAL FIREARMS PROHIBITIONS

Persons who have been convicted in any court of a qualifying misdemeanor crime of domestic violence (MCDV) generally are prohibited under federal law from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). This prohibition also applies to federal, state, and local governmental employees in both their official and private capacities. Violation of this prohibition is a federal offense punishable by up to ten years imprisonment. See 18 U.S.C. § 922(g)(9); see also 18 U.S.C. §§ 921(a)(33), 924(a)(2), 925(a)(1); 27 C.F.R. §§ 178.11, 178.32.

A qualifying MCDV is an offense that:

- ❖ Is a federal, state, or local offense that is a misdemeanor under federal or state law;
- ❖ Has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon; and,
- ❖ At the time the MCDV was committed, the defendant was:
 - ◆ A current or former spouse, parent, or guardian of the victim;
 - ◆ A person with whom the victim shared a child in common;
 - ◆ A person who was cohabiting with or had cohabited with the victim as a spouse, parent, or guardian; or,
 - ◆ A person who was or had been similarly situated to a spouse, parent, or guardian of the victim.

EXCEPTIONS: A person has not been convicted of a qualifying MCDV:

- ❖ IF the person was not represented by counsel — unless he or she knowingly and intelligently waived the right to counsel;
- ❖ IF the person was entitled to a jury trial AND the case was not tried by a jury — unless the person knowingly and intelligently waived the right to jury trial; or,
- ❖ IF the conviction was set aside or expunged; the person was pardoned; or, the person's civil rights — the right to vote, sit on a jury, and hold elected office — were restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense).

BUT: This exception does NOT lift the federal firearms prohibition if:

- ◆ the expungement, pardon, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms; or,
- ◆ the person is otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

FOR FURTHER INFORMATION ABOUT SECTION 922(g)(9) OR FEDERAL FIREARMS PROHIBITIONS GENERALLY, CONTACT YOUR LOCAL FIELD DIVISION OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS BY CALLING (800) 800-3855. FOR FURTHER INFORMATION ABOUT DOMESTIC VIOLENCE GENERALLY, CONTACT THE NATIONAL CENTER ON FULL FAITH AND CREDIT AT (800) 256-5883 EXT. 2.

ISSUING COURT

Full Faith & Credit

How can I make my orders easier to enforce?

Crafting an Enforceable Order

- Use clear and concise language in a legible order. For example, when crafting visitation provisions, be precise about times, location, persons, and duration, and avoid vague and unenforceable terms such as “reasonable.”
- State in the order that the respondent had notice and opportunity to be heard.
- Comply with the Parental Kidnapping Prevention Act (PKPA) and the Uniform Child Custody Jurisdiction Act (UCCJA) or Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) for custody and visitation provisions within protection orders.
- Cite the state statute upon which the court’s decision and order are based.
- Provide the court’s telephone number and, where available, the state registry telephone number.
- State the duration of the order and its expiration date, if any.
- Do not issue mutual orders. (Look to VAWA certification requirements 18 U.S.C. § 2265 (c).)

What else should I do to facilitate protection?

Facilitating Protection

- Inform the parties orally and in writing that the order is enforceable in all 50 states, U.S. territories, tribal lands, and the District of Columbia without registration by the petitioner or notice to the respondent.
- Indicate in writing or certify on the order that the order complies with VAWA’s full faith and credit provision (18 U.S.C. § 2265) and meets the definition under 18 U.S.C. § 2266.
- Make specific findings of abuse and include specific prohibitions against abuse.
- Provide the protected parties certified copies of the order and advise them to keep one with them at all times.
- Indicate on the face of the order whether there has been reasonable notice and opportunity to be heard. It is good practice to have the respondent, if present, sign an acknowledgment of service on the face of the order.
- State that the violation of the order, in addition to any state or tribal sanctions, may subject the respondent to prosecution for such federal crimes as:
 - ◆ Firearms possession;
 - ◆ Interstate travel to commit domestic violence;
 - ◆ Interstate stalking; and
 - ◆ Interstate violation of a protection order.
- At the request of the enforcing court, consult with that court to clear up ambiguities, verify validity, establish the status of service, etc.
- Notify the protected party of the National Domestic Violence Hotline number (800-799-SAFE , TTY 800-787-3224).
- Enter orders ASAP into NCIC or other accessible database.
- Include typed name of judge, address of court and phone number of court in all orders.

ISSUING COURT

Full Faith & Credit

Are there firearms considerations?

Firearms

In addition to any state, tribal, or territorial laws on firearms, federal firearms restrictions apply in protection order cases.

- A respondent may not obtain, possess, or transport a firearm or ammunition for the duration of the qualifying protection order.
- A respondent who has been convicted of a qualifying misdemeanor crime of domestic violence may never possess a firearm or ammunition.
- It may be a crime to sell or otherwise dispose of a firearm or ammunition to any person known to be prohibited from obtaining or possessing a firearm.
- To facilitate enforcement of the federal firearms restrictions, include in the order the specific findings (see 18 U.S.C. § 922 (g)(8)) regarding the grounds for issuing the order.
- Judges should take steps to ensure that when a respondent requests return of firearms at the expiration of a qualifying protection order, the court does not authorize return of firearms to a person who is otherwise disqualified under state or federal law from possessing firearms.



For more copies, please contact the National Council of Juvenile and Family Court Judges at 1-800-527-3223.

Resolved: That the Conference of Chief Justices and the Conference of State Court Administrators express their commitment to taking the necessary steps to support implementation of the Full Faith and Credit Provisions of the Violence Against Women Act (18 U.S.C. § 2265).

This project was supported by grant no. 1999-WE-VX-K004 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice.

ENFORCING COURT Full Faith & Credit

What is the source of my authority?

Full Faith and Credit

Since 1994, the Violence Against Women Act's full faith and credit provision (18 U.S.C. § 2265) has required every jurisdiction in the United States to recognize and enforce valid protection orders.

These jurisdictions include:

- A state and its political subdivisions;
- A tribal government;
- The District of Columbia; and
- A commonwealth, territory, or possession of the United States (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands).

Is the order enforceable?

Elements of an Enforceable Order

- The respondent is given notice and an opportunity to be heard, or, in the case of an *ex parte* order, the respondent will be given notice and an opportunity to be heard within a reasonable time, consistent with the requirements of due process.
- The issuing court had personal and subject matter jurisdiction to issue the order.
- The order has not expired.
- **A protection order from another jurisdiction that has these elements must be afforded a presumption of enforceability.**

What about orders against both parties?

Mutual Orders

Mutual orders are fully enforceable against the respondent.

Provisions against the petitioner are not entitled to interstate/tribal enforcement if:

- No cross or counter petition, complaint, or other written pleading was filed by the respondent seeking such a protection order; or
- A cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

What else should I do to facilitate protection?

Facilitating Protection

- Communicate with the issuing court to clear up ambiguities, verify validity, establish the status of service, etc.
- Ensure that court clerks and staff are familiar with and comply with the provisions of VAWA/full faith and credit.
- Notify protected parties of the National Domestic Violence Hotline number (800-799-SAFE, TTY 800-787-3224).
- Inform Issuing Court of disposition of any enforcement proceeding by filing a copy of order with Issuing Court.
- State courts are encouraged to initiate discussion with contiguous Indian nations about procedures for cross enforcement of protection orders.

ENFORCING COURT Full Faith & Credit

**What terms
must I enforce?**

**What enforcement
procedures
should I apply?**

**Are there
firearms
considerations?**

Enforcing Protection Orders of Other Jurisdictions

- A. Enforce the terms of the order as written, even if the enforcing jurisdiction lacks authority to enter such terms, e.g.:**
- Category of protected persons would not be eligible for relief in enforcing jurisdiction;
 - Order contains relief unavailable in enforcing jurisdiction;
 - Order has longer duration than provided for in enforcing jurisdiction; or
 - Order calls for surrender of weapons and enforcing jurisdiction has no such provision. (See also Firearms below.)
- B. Use the enforcement procedures of the enforcing jurisdiction.**
- Treat the violation as a criminal offense if it is criminalized in the enforcing jurisdiction.
 - Award attorney's fees if sought and if provided for in the enforcing jurisdiction.

C. Do not notify the respondent that a protection order has been registered or filed in your jurisdiction unless the petitioner so requests, and does so in writing. 18 U.S.C. § 2265 (d) (1).

D. Neither registration/filing nor notice is a prerequisite for enforcement of valid protection orders from other jurisdictions. 18 U.S.C. § 2265 (d) (1).

Firearms

In addition to any state, tribal, or territorial laws on firearms, certain federal firearms restrictions apply in protection order cases.

- A respondent may not obtain, possess, or transport a firearm or ammunition for the duration of the qualifying protection order.
- A respondent who has been convicted of a qualifying misdemeanor crime of domestic violence may never possess a firearm or ammunition.
- It may be a crime to sell or otherwise transfer a firearm or ammunition to any person known to be prohibited from obtaining or possessing a firearm.
- Judges should take steps to ensure that when a respondent requests return of firearms at the expiration of a qualifying protection order, the court does not authorize return of firearms to a person who is otherwise disqualified under either state or federal law from possessing firearms.



For more copies, please contact the National Council of Juvenile and Family Court Judges at 1-800-527-3223. Resolved: That the Conference of Chief Justices and the Conference of State Court Administrators express their commitment to taking the necessary steps to support implementation of the Full Faith and Credit Provisions of the Violence Against Women Act (18 U.S.C. § 2265). This project was supported by grant no. 1999-WE-VX-K004 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice.

PROTECTION ORDER FORMS

All Protection Order Forms are available online in both Microsoft Word and Adobe PDF format at the following URL <http://www.in.gov/judiciary/forms/po.html>.

Clerk Forms

Protection Order Forms

No Contact Order Forms

Workplace Violence Restraining Order Forms

APPENDIX I

DEFINITIONS

Appendix I

Important Definitions

1. **“Crime involving domestic or family violence”**

IC 31-9-2-29.5

IC 35-41-1-6.5

“Crime involving domestic or family violence” means a crime that occurs when a family or household member commits, attempts to commit, or conspires to commit any of the following against another family or household member:

- (1) A homicide offense under IC 35-42-1.
- (2) A battery offense under IC 35-42-2.
- (3) Kidnapping or confinement under IC 35-42-3.
- (4) A sex offense under IC 35-42-4.
- (5) Robbery under IC 35-42-5.
- (6) Arson or mischief under IC 35-43-1.
- (7) Burglary or trespass under IC 35-43-2.
- (8) Disorderly conduct under IC 35-45-1.
- (9) Intimidation or harassment under IC 35-45-2.
- (10) Voyeurism under IC 35-45-4.
- (11) Stalking under IC 35-45-5.
- (12) An offense against family under IC 35-46-1-2 through IC 35-46-1-8, IC 35-46-1-12, or IC 35-46-1-15.1.

2. **“Domestic or family violence”**

IC 31-9-2-42

IC 34-6-2-34.5

“Domestic or family violence” means, except for an act of self defense, the occurrence of one (1) or more of the following acts committed by a family or household member:

- (1) Attempting to cause, threatening to cause, or causing physical harm to another family or household member *without legal justification*.
- (2) Placing a family or household member in fear of physical harm *without legal justification*.
- (3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.

For purposes of IC 34-26-5, domestic and family violence also includes stalking (as defined in IC 35-45-10-1) or a sex offense under IC 35-42-4, whether or not the stalking or sex offense is committed by a family or household member..

(Note: *Italicized language is found in the Title 31 definition only.*)

3. **“Family or household member”**

IC 31-9-2-44.5

IC 34-6-2-44.8

“Family or household member” means:

- (1) a person who is a current or former spouse;
- (2) a person who is dating or has dated;
- (3) a person who is engaged or was engaged in a sexual relationship;
- (4) a person who is related by blood or adoption;
- (5) a person who is related or was related by marriage;
- (6) a person who has an established legal relationship or previously established a legal relationship:
 - (A) as a guardian;
 - (B) as a ward;
 - (C) as a custodian;
 - (D) as a foster parent; or
 - (E) in a capacity similar to those listed in clauses (A) through (D);
- (7) a person who has a child in common; and
- (8) a minor child of a person in a relationship described in subdivisions (1) through (7).

4. **“Family or household member”**

IC 35-41-1-10.6

- (a) An individual is a “family or household member” of another person if the individual:
 - (1) is a current or former spouse of the other person;
 - (2) is dating or has dated the other person;
 - (3) is or was engaged in a sexual relationship with the other person;
 - (4) is related by blood or adoption to the other person;
 - (5) is or was related by marriage to the other person;
 - (6) has or previously had an established legal relationship:
 - (A) as a guardian of the other person;
 - (B) as a ward of the other person;
 - (C) as a custodian of the other person;
 - (D) as a foster parent of the other person; or
 - (E) in a capacity with respect to the other person similar to those listed in clauses (A) through (D); or
 - (7) has a child in common with the other person.
- (b) An individual is a “family or household member” of both persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), or (a)(7) applies if the individual is a minor child of one (1) of the persons.

5. **“Crime of domestic violence”**

IC 35-41-1-6.3

“Crime of domestic violence,” for purposes of IC 3-7-13-5 and IC 33-4-5-7, means an offense or the attempt to commit an offense that:

- (1) has as an element the:
 - (A) use of physical force; or
 - (B) threatened use of a deadly weapon; and

(2) is committed against a:

- (A) current or former spouse, parent, or guardian of the defendant;
- (B) person with whom the defendant shared a child in common;
- (C) person who was cohabiting with or had cohabited with the defendant as a spouse, parent, or guardian; or
- (D) person who was or had been similarly situated to a spouse, parent, or guardian of the defendant.

ADDITIONAL DEFINITIONS

34-6-2-103(c) "**Person**", for purposes of section 44.8 of this chapter, means an adult or a minor.

34-6-2-121.4 "**Protected person**" means a petitioner or a family or household member of the petitioner who is protected by the terms of a civil protective order issued under IC 34-26-5.

34-6-2-121.6 (a) "**Protection order**" or "**order for protection**", for purposes of sections 48.5, 121.4, and 130.7 of this chapter and IC 34-26-5, means an injunction or other order issued by a tribunal of the issuing state or Indian tribe to prevent an individual from:

- (1) engaging in violent or threatening acts against;
- (2) engaging in harassment of;
- (3) engaging in contact or communication with; or
- (4) being in physical proximity to;

another person, including temporary and final orders issued by civil and criminal courts.

(b) The term does not include a support or child custody order issued under the dissolution and child custody laws of a state or Indian tribe, except to the extent that the order qualifies as a protection order under subsection (a) and is entitled to full faith and credit under a federal law other than [18 U.S.C. 2265](#).

(c) The term applies to an order regardless of whether the order is obtained by filing an independent action or as a pendente lite order in another proceeding if any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

34-6-2-130.7 "**Respondent**", for purposes of IC 34-26-5, means the individual against whom the enforcement of a protection order is sought.

35-45-10-1. "**Stalk**" defined. As used in this chapter, "stalk" means a knowing or an intentional course of conduct involving repeated or continuing **harassment** of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the **victim** to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity. (emphasis added)

35-45-10-2. "**Harassment**" defined. As used in this chapter, "harassment" means conduct directed toward a **victim** that includes but is not limited to repeated or continuing **impermissible contact** that would cause a reasonable person to suffer emotional distress and that actually causes the **victim** to suffer emotional distress. Harassment does not include statutorily or constitutionally protected activity, such as lawful picketing pursuant to labor disputes or lawful employer-related activities pursuant to labor disputes. (emphasis added)

35-45-10-3. "**Impermissible contact**" defined. As used in this chapter, "impermissible

contact" includes but is not limited to knowingly or intentionally following or pursuing the **victim**. (emphasis added)

35-45-10-4. "**Victim**" defined. As used in this chapter, "victim" means a person who is the object of stalking.

35-42-4. A "**sex offense under IC 35-42-4**" means: Rape, Criminal deviate conduct, Child molesting, Child exploitation, Vicarious sexual gratification, Child solicitation, Child seduction, Sexual battery, and, Sexual misconduct with a minor.

APPENDIX II

IMPORTANT CASES

Appendix II

INDIANA CASES DEALING WITH PROTECTIVE ORDERS

1. Tillman v. Snow, [571 N.E.2d 578](#) (Ind. Ct. App. 1991)
2. State ex rel. Meade v. Marshall Superior Court II, [644 N.E.2d 87](#) (Ind. 1994)
3. Rzeszutek v. Beck, [649 N.E.2d 673](#) (Ind. Ct. App. 1994)
4. Hallberg v. Hendricks County Office of Family and Children, [662 N.E.2d 639](#) (Ind. Ct. App. 1996)
5. Van Santen v. Treece, [665 N.E.2d 943](#) (Ind. Ct. App. 1996)
6. Pompey v. Pryner, [668 N.E.2d 1243](#) (Ind. Ct. App. 1996)
7. Webster v. State, [673 N.E.2d 509](#) (Ind. Ct. App. 1996)
8. Maurer v. Maurer, [712 N.E.2d 990](#) (Ind. Ct. App. 1999)
9. Holmes v. Jones, [719 N.E.2d 843](#) (Ind. Ct. App. 1999)
10. Guerin v. Schaefer, [727 N.E.2d 1119](#) (Ind. Ct. App. 2000)
11. Gordon v. Gordon, [733 N.E.2d 468](#) (Ind. Ct. App. 2000)
12. Garmene v. LeMasters, [743 N.E.2d 782](#) (Ind. Ct. App. 2001)
13. Hill v. Ramey, [744 N.E.2d 509](#) (Ind. Ct. App. 2001)
14. Carter v. Johnson, [745 N.E.2d 237](#) (Ind. Ct. App. 2001)
15. Parkhurst v. VanWinkle, [786 N.E.2d 1159](#) (Ind. Ct. App. 2003)
16. Flash v. Holtsclaw, [789 N.E.2d 955](#) (Ind. Ct. App. 2003)
17. Essany v. Bower, [790 N.E.2d 148](#) (Ind. Ct. App. 2003)

APPENDIX III

BENCH CARDS

PROTECTION ORDERS AND FEDERAL FIREARMS PROHIBITIONS

Persons subject to a qualifying protection order under federal law are generally prohibited from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). Violation of this prohibition while the order remains in effect is a federal offense punishable by up to ten years imprisonment.

18 U.S.C. §§ 922(g)(8), 924(a)(2).

The following list enumerates the elements that define a qualifying protection order under the federal firearms prohibition. **Generally, a defendant/respondent subject to a protection order that includes one element (indicated by a diamond) from each section listed below is covered by the federal firearms prohibition.**

I. HEARING

- ❖ Defendant/Respondent received **actual notice** and had an **opportunity to participate**.

II. INTIMATE PARTNER

Plaintiff/Petitioner is an **intimate partner** of the Defendant/Respondent, (18 U.S.C. § 921(a)(32)) that is:

- ❖ a **spouse** of Defendant/Respondent;
- ❖ a **former spouse** of Defendant/Respondent;
- ❖ an individual who is a **parent** of a child of Defendant/Respondent; **or**
- ❖ an individual who **cohabitates or has cohabited** with Defendant/Respondent.

III. RESTRAINS FUTURE CONDUCT

- ❖ The order **restrains** Defendant/Respondent from **harassing, stalking, or threatening** the intimate partner, child of the Defendant/Respondent, or child of the Defendant/Respondent's intimate partner; **or**
- ❖ The order **restrains** Defendant/Respondent from engaging in other conduct that would place the intimate partner in **reasonable fear of bodily injury** to the partner or child.

IV. CREDIBLE THREAT OR PHYSICAL FORCE

- ❖ The order includes a finding that Defendant/Respondent is a **credible threat** to the physical safety of the intimate partner or child; **or**
- ❖ The order, by its terms, explicitly prohibits the use, attempted use, or threatened use of **physical force** against the intimate partner or child that would reasonably be expected to cause bodily injury.

For further information about firearms prohibitions or section 922(g)(8), contact your local Field Division of the Bureau of Alcohol, Tobacco and Firearms by calling (800) 800-3855. For general information about protection orders and firearms, contact the Full Faith and Credit Project at (800) 256-5883.

MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE AND FEDERAL FIREARMS PROHIBITIONS

Persons who have been convicted in any court of a qualifying misdemeanor crime of domestic violence (MCDV) generally are prohibited under federal law from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). This prohibition also applies to federal, state, and local governmental employees in both their official and private capacities. Violation of this prohibition is a federal offense punishable by up to ten years imprisonment. See 18 U.S.C. § 922(g)(9); see also 18 U.S.C. §§ 921(a)(33), 924(a)(2), 925(a)(1); 27 C.F.R. §§ 178.11, 178.32.

A qualifying MCDV is an offense that:

- ❖ Is a federal, state, or local offense that is a misdemeanor under federal or state law;
- ❖ Has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon; and,
- ❖ At the time the MCDV was committed, the defendant was:
 - ◆ A current or former spouse, parent, or guardian of the victim;
 - ◆ A person with whom the victim shared a child in common;
 - ◆ A person who was cohabiting with or had cohabited with the victim as a spouse, parent, or guardian; or,
 - ◆ A person who was or had been similarly situated to a spouse, parent, or guardian of the victim.

EXCEPTIONS: A person has not been convicted of a qualifying MCDV:

- ❖ IF the person was not represented by counsel — unless he or she knowingly and intelligently waived the right to counsel;
- ❖ IF the person was entitled to a jury trial AND the case was not tried by a jury — unless the person knowingly and intelligently waived the right to jury trial; or,
- ❖ IF the conviction was set aside or expunged; the person was pardoned; or, the person's civil rights — the right to vote, sit on a jury, and hold elected office — were restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense).

BUT: This exception does NOT lift the federal firearms prohibition if:

- ◆ the expungement, pardon, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms; or,
- ◆ the person is otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

FOR FURTHER INFORMATION ABOUT SECTION 922(g)(9) OR FEDERAL FIREARMS PROHIBITIONS GENERALLY, CONTACT YOUR LOCAL FIELD DIVISION OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS BY CALLING (800) 800-3855. FOR FURTHER INFORMATION ABOUT DOMESTIC VIOLENCE GENERALLY, CONTACT THE NATIONAL CENTER ON FULL FAITH AND CREDIT AT (800) 256-5883 EXT. 2.

ISSUING COURT

Full Faith & Credit

How can I make my orders easier to enforce?

Crafting an Enforceable Order

- Use clear and concise language in a legible order. For example, when crafting visitation provisions, be precise about times, location, persons, and duration, and avoid vague and unenforceable terms such as “reasonable.”
- State in the order that the respondent had notice and opportunity to be heard.
- Comply with the Parental Kidnapping Prevention Act (PKPA) and the Uniform Child Custody Jurisdiction Act (UCCJA) or Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) for custody and visitation provisions within protection orders.
- Cite the state statute upon which the court’s decision and order are based.
- Provide the court’s telephone number and, where available, the state registry telephone number.
- State the duration of the order and its expiration date, if any.
- Do not issue mutual orders. (Look to VAWA certification requirements 18 U.S.C. § 2265 (c).)

What else should I do to facilitate protection?

Facilitating Protection

- Inform the parties orally and in writing that the order is enforceable in all 50 states, U.S. territories, tribal lands, and the District of Columbia without registration by the petitioner or notice to the respondent.
- Indicate in writing or certify on the order that the order complies with VAWA’s full faith and credit provision (18 U.S.C. § 2265) and meets the definition under 18 U.S.C. § 2266.
- Make specific findings of abuse and include specific prohibitions against abuse.
- Provide the protected parties certified copies of the order and advise them to keep one with them at all times.
- Indicate on the face of the order whether there has been reasonable notice and opportunity to be heard. It is good practice to have the respondent, if present, sign an acknowledgment of service on the face of the order.
- State that the violation of the order, in addition to any state or tribal sanctions, may subject the respondent to prosecution for such federal crimes as:
 - ◆ Firearms possession;
 - ◆ Interstate travel to commit domestic violence;
 - ◆ Interstate stalking; and
 - ◆ Interstate violation of a protection order.
- At the request of the enforcing court, consult with that court to clear up ambiguities, verify validity, establish the status of service, etc.
- Notify the protected party of the National Domestic Violence Hotline number (800-799-SAFE , TTY 800-787-3224).
- Enter orders ASAP into NCIC or other accessible database.
- Include typed name of judge, address of court and phone number of court in all orders.

ISSUING COURT

Full Faith & Credit

Are there firearms considerations?

Firearms

In addition to any state, tribal, or territorial laws on firearms, federal firearms restrictions apply in protection order cases.

- A respondent may not obtain, possess, or transport a firearm or ammunition for the duration of the qualifying protection order.
- A respondent who has been convicted of a qualifying misdemeanor crime of domestic violence may never possess a firearm or ammunition.
- It may be a crime to sell or otherwise dispose of a firearm or ammunition to any person known to be prohibited from obtaining or possessing a firearm.
- To facilitate enforcement of the federal firearms restrictions, include in the order the specific findings (see 18 U.S.C. § 922 (g)(8)) regarding the grounds for issuing the order.
- Judges should take steps to ensure that when a respondent requests return of firearms at the expiration of a qualifying protection order, the court does not authorize return of firearms to a person who is otherwise disqualified under state or federal law from possessing firearms.



For more copies, please contact the National Council of Juvenile and Family Court Judges at 1-800-527-3223.

Resolved: That the Conference of Chief Justices and the Conference of State Court Administrators express their commitment to taking the necessary steps to support implementation of the Full Faith and Credit Provisions of the Violence Against Women Act (18 U.S.C. § 2265).

This project was supported by grant no. 1999-WE-VX-K004 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice.

ENFORCING COURT Full Faith & Credit

What is the source of my authority?

Full Faith and Credit

Since 1994, the Violence Against Women Act's full faith and credit provision (18 U.S.C. § 2265) has required every jurisdiction in the United States to recognize and enforce valid protection orders.

These jurisdictions include:

- A state and its political subdivisions;
- A tribal government;
- The District of Columbia; and
- A commonwealth, territory, or possession of the United States (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands).

Is the order enforceable?

Elements of an Enforceable Order

- The respondent is given notice and an opportunity to be heard, or, in the case of an *ex parte* order, the respondent will be given notice and an opportunity to be heard within a reasonable time, consistent with the requirements of due process.
- The issuing court had personal and subject matter jurisdiction to issue the order.
- The order has not expired.
- **A protection order from another jurisdiction that has these elements must be afforded a presumption of enforceability.**

What about orders against both parties?

Mutual Orders

Mutual orders are fully enforceable against the respondent.

Provisions against the petitioner are not entitled to interstate/tribal enforcement if:

- No cross or counter petition, complaint, or other written pleading was filed by the respondent seeking such a protection order; or
- A cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

What else should I do to facilitate protection?

Facilitating Protection

- Communicate with the issuing court to clear up ambiguities, verify validity, establish the status of service, etc.
- Ensure that court clerks and staff are familiar with and comply with the provisions of VAWA/full faith and credit.
- Notify protected parties of the National Domestic Violence Hotline number (800-799-SAFE, TTY 800-787-3224).
- Inform Issuing Court of disposition of any enforcement proceeding by filing a copy of order with Issuing Court.
- State courts are encouraged to initiate discussion with contiguous Indian nations about procedures for cross enforcement of protection orders.

ENFORCING COURT Full Faith & Credit

**What terms
must I enforce?**

**What enforcement
procedures
should I apply?**

**Are there
firearms
considerations?**

Enforcing Protection Orders of Other Jurisdictions

- A. Enforce the terms of the order as written, even if the enforcing jurisdiction lacks authority to enter such terms, e.g.:**
- Category of protected persons would not be eligible for relief in enforcing jurisdiction;
 - Order contains relief unavailable in enforcing jurisdiction;
 - Order has longer duration than provided for in enforcing jurisdiction; or
 - Order calls for surrender of weapons and enforcing jurisdiction has no such provision. (See also Firearms below.)
- B. Use the enforcement procedures of the enforcing jurisdiction.**
- Treat the violation as a criminal offense if it is criminalized in the enforcing jurisdiction.
 - Award attorney's fees if sought and if provided for in the enforcing jurisdiction.

C. Do not notify the respondent that a protection order has been registered or filed in your jurisdiction unless the petitioner so requests, and does so in writing. 18 U.S.C. § 2265 (d) (1).

D. Neither registration/filing nor notice is a prerequisite for enforcement of valid protection orders from other jurisdictions. 18 U.S.C. § 2265 (d) (1).

Firearms

In addition to any state, tribal, or territorial laws on firearms, certain federal firearms restrictions apply in protection order cases.

- A respondent may not obtain, possess, or transport a firearm or ammunition for the duration of the qualifying protection order.
- A respondent who has been convicted of a qualifying misdemeanor crime of domestic violence may never possess a firearm or ammunition.
- It may be a crime to sell or otherwise transfer a firearm or ammunition to any person known to be prohibited from obtaining or possessing a firearm.
- Judges should take steps to ensure that when a respondent requests return of firearms at the expiration of a qualifying protection order, the court does not authorize return of firearms to a person who is otherwise disqualified under either state or federal law from possessing firearms.



For more copies, please contact the National Council of Juvenile and Family Court Judges at 1-800-527-3223. Resolved: That the Conference of Chief Justices and the Conference of State Court Administrators express their commitment to taking the necessary steps to support implementation of the Full Faith and Credit Provisions of the Violence Against Women Act (18 U.S.C. § 2265). This project was supported by grant no. 1999-WE-VX-K004 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice.

APPENDIX IV

TABLE OF STATUTES AND RULES

Appendix IV TABLE OF STATUTES AND RULES

Indiana Statutes

Title 5

[Ind. Code 5-2-9](#) (all)

Title 31

[Ind. Code 31-14-16-1](#)

[Ind. Code 31-15-4-1](#)

[Ind. Code 31-15-5-1](#)

[Ind. Code 31-30-1-1](#)

[Ind. Code 31-32-13](#)

[Ind. Code 31-34-20](#)

[Ind. Code 31-34-25](#)

[Ind. Code 31-37-19](#)

[Ind. Code 31-37-25](#)

Title 35

[Ind. Code 35-33-8-3.2](#)

[Ind. Code 35-33-8-5](#)

[Ind. Code 35-38-2-2.3](#)

[Ind. Code 35-42-2-1](#)

[Ind. Code 35-42-2-1.3](#)

[Ind. Code 35-42-2-2](#)

[Ind. Code 35-42-3-3](#)

[Ind. Code 35-43-1-2](#)

[Ind. Code 35-43-2-1.5](#)

[Ind. Code 35-43-2-2](#)

[Ind. Code 35-45-2-1](#)

[Ind. Code 35-45-2-2](#)

[Ind. Code 35-45-10](#) (all)

[Ind. Code 35-46-1-15.1](#) through -20

[Ind. Code 35-47-4-6](#)

[Ind. Code 35-50-1-2](#)

Title 33

[Ind. Code 33-14-1-7](#)

Title 34

[Ind. Code 34-26-5](#) (all)

[Ind. Code 34-26-6](#) (all)

[Ind. Code 34-47-3](#)

[Ind. Code 34-47-4](#)

Indiana Rules

Trial Rules 4, 4.1, & 4.4

Trial Rule 65 (B), (E), & (F)

Trial Rule 75

Administrative Rule 9

Federal Statutes

[18 USC 921](#) (32) & (33)

[18 USC 922](#) (d) (8) & (9)

[18 USC 922](#) (g) (8) & (9)

[18 USC 925](#) (a) (1)

[18 USC 2261](#)

[18 USC 2261A](#)

[18 USC 2262](#)

[18 USC 2265](#)

[18 USC 2266](#)

APPENDIX V

OTHER RESOURCES

Appendix V

SUGGESTED READING & RESOURCES

1. The Criminalization of Domestic Violence: Promises and Limits : Jeffrey Fagan. Monograph published in January, 1996 by the NIJ (National Institute of Justice).
2. “Re-Abuse in a Population of Court Restrained Male Batterers: Why Restraining Orders Don’t Work” by Andrew R. Klein, in Eve S. Buzawa and Carl G. Buzawa, Eds., Do Arrests and Restraining Orders Work? Sage Publications, Inc., Thousand Oaks, California, 1996 (pp. 192-214).
3. See also “Effects of Restraining Orders on Domestic Violence Victims”, by Adele Harrell and Barbara E. Smith, pp. 214-243, in the same book.
4. Understanding Violence Against Women, Nancy A. Crowell and Ann W. Burgess, eds. See Chapter 4, “Prevention and Intervention”, p. 93. National Academy Press, Washington, DC 1996.
5. Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence, National Center for State Courts Research Report, Susan L. Keilitz, Project Director, with Paula L. Hannaford and Hillery S. Efken, NCSC Publication #R-201, 1997.
6. Arlene N. Weisz, Richard M. Tolman, & Daniel G. Saunders, “Assessing the Risk of Severe Domestic Violence: The Importance of Survivors’ Predictions” Journal of Interpersonal Violence, Vol. 15, No.1, January 2000 pp. 75-90, Sage Publications, Inc.
7. For information on types of injuries associated with domestic violence, see: Journal of the American Medical Association (JAMA), August 22-29, 1990, Vol. 264, No.8, p. 943.
8. “Civil Protection Orders and Risk of Subsequent Police-Reported Violence”, Victoria L. Holt, Mary A Kernic, Thomas Lumley, Marsha E. Wolf, & Frederick P. Rivara, Journal of the American Medical Association (JAMA), August 7, 2002, Vol. 288, No.5, pp.589-594.
9. “Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women”, Judith McFarlane, Ann Malecha, Julia Gist, Kathy Watson, Elizabeth Batten, Iva Hall, & Sheila Smith, American Journal of Public Health, April 2004, Vol. 94, No. 4, pp. 613-618.
10. National Resource Center on Domestic Violence (800) 537-2238
11. National Center on Full Faith & Credit Legal Office (800) 256-5883
12. National Council of Juvenile & Family Court Judges Family Violence Project

(800) 52PEACE (527-3223)

13. Family Violence Prevention Fund (415) 252-8900

14. STOP Violence Against Women Grants Technical Assistance Project (800) 256-5883

15. National Domestic Violence Hotline (800) 799-SAFE (7233)

16. Indiana Domestic Violence Hotline (800) 332-7385

INDIANA CRIMINAL STATUTES AND CASES OF NOTE

- A. Compensation for Victims of Violent Crimes**
 - 1. IC 5-2-6.1-1
- B. Law Enforcement Officers**
 - 1. Continuing education re: family violence
 - a. IC 5-2-8-1
- C. Address Confidentiality Program for Victims of Family Violence**
 - 1. IC 5-26.5 *et seq.*
- D. Compensation for Witnesses in Criminal Cases**
 - 1. IC 33-19-1-5
- E. Battered Woman Syndrome Expert Testimony**
 - 1. Iqbal v. State, [805 N.E.2d 401](#) (Ind. Ct. App. 2004)
 - 2. Marley v. State, [747 N.E.2d 1123](#) (Ind. 2001)
 - 3. Carnahan v. State, [681 N.E.2d 1164](#) (Ind. Ct. App.1997)
 - 4. Barrett v. State, [675 N.E.2d 1112](#) (Ind. Ct. App.1996)
 - 5. Isaacs v. State, [659 N.E. 2d 1036](#) (Ind.1995)
 - 6. Dausch v. State, [616 N.E.2d 13](#) (Ind.1993)
 - 7. Ind. Rules Evid. 702
 - 8. IC 35-41-3-11
- F. Arrest/Duty of Law Enforcement Officers at Scene of Family/Domestic Violence Run**
 - 1. Probable cause arrest OK for: domestic battery; battery with injury; invasion of privacy; violating a “stay away” order issued as a condition of probation under IC 35-50-7; interference with the reporting of a crime; interfering with or preventing the reporting of a crime involving domestic or family violence (as defined in IC 34-6-2-34.5); and, carrying a handgun without a license
 - a. IC 35-33-1-1
 - 2. Officers have certain duties to victim, children. Officers are empowered to confiscate firearms, ammunition, or deadly weapons from the scene.
 - a. IC 35-33-1-1.5

G. Bail

1. Can place conditions on bail (including no-contact orders)
 - a. IC 35-33-8-3.2
2. Can consider dangerousness to others/community
 - a. IC 35-33-8-3.2
 - b. IC 35-33-8-4
3. Revocation if new arrest, or if conditions of bail are violated
 - a. IC 35-33-8-5
 - b. IC 35-40-6-6
4. Crime victim's right to have safety considered in judge's bail decision
 - a. IC 35-40-5-4
5. Crime victim's right to be notified of bond hearing
 - a. IC 35-40-7-2
6. Revocation of Bail/Dangerousness
 - a. Ray v. State, [679 N.E.2d 1364](#) (Ind. Ct. App.1997)
7. Length of time an arrested person can be held before initial hearing/Right to bail generally
 - a. Schmidt v. State, [746 N.E.2d 369](#) (Ind. Ct. App.2001)

H. Crime Victim Notification of Defendant's Release from Jail

1. IC 35-40-5-2
2. IC 35-40-7-2

I. Victim Rights RE: Discussion of Plea Bargain/Presentence Report/Sentencing

1. IC 35-35-3-2
2. IC 35-35-3-5
3. IC 35-35-3-6
4. IC 35-35-3-7
5. IC 35-40-5-3
6. IC 35-40-5-6
7. IC 35-40-5-8
8. IC 35-40-6-7

J. Continuances in Child Abuse Cases

1. IC 35-36-7-3

K. Child Hearsay (Including Closed Circuit Testimony)

1. Crawford v. Washington, [124 S.Ct. 1354](#) (2004)
2. IC 35-37-4-6
3. IC 35-37-4-8
4. Ind. Rules Evid. 804

- L. Rape Shield Statute**
 - 1. IC 35-37-4-4
 - 2. Ind. Rules Evid. 412
- M. Keeping Victims Safe in the Courtroom/Waiting Area**
 - 1. IC 35-37-4-11
- N. Victim's Right Not to Disclose Home Address, Etc.**
 - 1. IC 35-37-4-12
- O. Prior Battery on Same Victim (Evidence of Same)**
 - 1. IC 35-37-4-14
 - 2. Ind. Rules Evid. 404(B)
 - 3. There are many cases discussing the admissibility of prior "bad acts" in general, not just limited to battery. One of the most recent is: Iqbal v. State, [805 N.E.2d 401](#) (Ind. Ct. App. 2004)
- P. Privileged Communications, Victim Counselors**
 - 1. IC 35-37-6-1 (entire chapter)
 - 2. Ind. Rules Evid. 501
- Q. Statutory Aggravator for Sentencing**
 - 1. IC 35-38-1-7.1(b)(14)
 - 2. Triggered when a child witnesses a crime of family violence
- R. Victim's Presence at Sentencing**
 - 1. IC 35-38-1-2
 - 2. IC 35-38-1-8
 - 3. IC 35-38-1-8.5
 - 4. IC 35-38-1-9 (*Note also IC 35-40-5, above)
- S. Sentence Modification/Notice to Victim**
 - 1. IC 35-38-1-17
- T. Conditions of Probation**
 - 1. IC 35-38-2-2.3
 - 2. Victim's right to be notified of VOP hearing/modification of probation conditions
 - a. IC 35-40-8-1, -2
- U. Mandatory Duties of Judge at Sentencing**
 - 1. IC 35-38-1-7.7
 - 2. Judge must determine if a crime of domestic violence
 - 3. Web site for form: www.in.gov/judiciary/admin/forms/domviol.html

V. Self-Defense Statute/BWS Statute

1. IC 35-41-3-2
2. IC 35-41-3-11

W. Battery & Domestic Battery

1. IC 35-42-2-1
2. IC 35-42-2-1.3
 - a. Vaughn v. State, [782 N.E.2d 417](#) (Ind. Ct. App. 2003)
3. Davis v. State, [796 N.E.2d 798](#) (Ind. Ct. App. 2003)
4. Williams v. State, [798 N.E.2d 457](#) (Ind. Ct. App. 2003)

X. Criminal Mischief

1. IC 35-43-1-2
2. Common property
 - a. IC 35-41-1-23 (b)
3. Damage amount
 - a. Pepper v. State, [558 N.E. 2d 899](#) (Ind. Ct. App. 1990)

Y. Residential Entry

1. IC 35-43-2-1.5
2. Ellyson v. State, [603 N.E. 2d 1369](#) (Ind. Ct. App. 1992)
 - a. This is a burglary case; however, the principle that a spouse can
burglarize the other spouse's home, even if it was once the
marital residence, would appear to hold true in a residential
entry case also.

Z. Intimidation

1. IC 35-45-2-1
2. Huber v. State, [805 N.E.2d 887](#) (Ind. Ct. App. 2004)

AA. Harassment

1. IC 35-45-2-2

BB. Interference With Reporting of Crime

1. IC 35-45-2-5

CC. Stalking

1. IC §35-45-10-1
2. Johnson v. State, [648 N.E. 2d 666](#) (Ind. Ct. App. 1995)
3. Hendricks v. State, [649 N.E. 2d 1050](#) (Ind. Ct. App. 1995)
4. Burton v. State, [665 N.E. 2d 924](#) (Ind. Ct. App. 1996)

5. Waldon v. State, [684 N.E.2d 206](#) (Ind. Ct. App.1997)
6. Johnson v. State, [721 N.E.2d 327](#) (Ind. Ct. App.1999)
7. Landis v. State, [726 N.E. 2d 801](#) (Ind. Ct. App.2000)
8. Garza v. State, [736 N.E.2d 323](#) (Ind. Ct. App.2000)
9. Peckinpaugh v. State, [743 N.E.2d 1238](#) (Ind. Ct. App.2001)
10. Smith v. State, [802 N.E.2d 948](#) (Ind. Ct. App. 2004)

DD. Invasion of Privacy

1. IC 35-46-1-15.1
2. Webster v. State, [673 N.E. 2d 509](#) (Ind. Ct. App.1996)
 - a. double jeopardy issue
3. Huber v. State, [805 N.E.2d 887](#) (Ind. Ct. App. 2004)

EE. Restitution

1. Can order regardless of probation status
2. IC 35-50-5-3

FF. Community Transition Program

1. IC 35-38-1-24, -25

GG. Other Victim Rights Laws

1. See IC 35-40-1 *et seq.*
2. Indiana Constitution, Article 1, Section 13

HH. Testimonial Privilege Between Spouses

1. Rubalcada v. State, [731 N.E.2d 1015](#) (Ind. 2000)
2. IC 34-46-3-1
3. Ind. Rules Evid. 501

II. Rebuttable Presumption of Supervised Visitation as a Result of Conviction for a Crime Involving Family/Domestic Violence

1. IC 31-14-14-5
2. IC 31-17-2-8.3
3. Definition/what kinds of crimes qualify: IC 35-41-1-6.5
4. Definition of “family or household member”: IC 35-41-1-10.6

JJ. Unlawful Possession of a Firearm by a Domestic Batterer

1. IC 35-47-4-6

KK. Possession of a Handgun by a Domestic Batterer

1. I.C. 35-47-2-1

LL. No Contact Orders During Incarceration (Not Condition of Probation)

1. Jarrett v. State, [804 N.E.2d 807](#) (Ind. Ct. App. 2004)

MM. Excited Utterances

1. Ind. Rules Evid. 803(2)
2. Domestic Battery case—victim not present at trial: Cox v. State, [774 N.E.2d 1025](#) (Ind. Ct. App. 2002)
3. Murder case—victim’s excited utterance used at trial: Taylor v. State, [697 N.E.2d 51](#) (Ind. 1998)
4. Domestic Battery case—victim present at trial, but refused to participate. This case discusses Crawford v. Washington, supra: Fowler v. State, [809 N.E.2d 960](#) (Ind. Ct. App. 2004)
5. Hammon v. State, [809 N.E.2d 945](#) (Ind. Ct. App. 2004)

NN. Forcing Victims to Testify

1. Fowler v. State, [809 N.E.2d 960](#) (Ind. Ct. App. 2004)

IDACS Code Definitions

The right hand margin of each Protection Order contains numbers reflecting “IDACS Codes.” The codes are used to transmit information about each protection order to law enforcement agencies throughout the nation. The codes correspond to the following information:

- 01 The respondent/defendant is restrained from assaulting, battering, threatening, abusing, harassing, following, interfering, or stalking the protected person and/or the child of the protected person.
- 02 The respondent/defendant shall not threaten a member of the protected person’s family or household.
- 03 The protected person is granted exclusive possession of the residence or household.
- 04 The respondent/defendant is required to stay away from the residence, property, school or place of employment of the protected person or other family or household member.
- 05 The respondent/defendant is restrained from making any communication with the protected person(s), including but not limited to, personal, written, or telephone contact, or their employer, employees, or fellow workers, or others with whom the communication would be likely to cause annoyance or alarm the protected person(s).
- 06 The respondent **[not the protected person]** is awarded temporary custody of the children named.
- 07 The respondent/defendant is prohibited from possessing and/or purchasing a firearm or other weapon or ammunition.
- 08 Special terms and conditions of the order, such as keeping a certain number of yards away from the protected person, or whether this is a workplace violence restraining order.